The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page ii.

VOL. LXXV. **Saturday, November 28, 1931.** No. 48

Current Topics.

The Statute of Westminster.

THE BILL to be entitled "The Statute of Westminster" was introduced into the House of Commons by Mr. J. H. THOMAS as "the most important for generations." We propose to make a more detailed examination of it later on, after it has been considered, and, possibly, amended by the House of Lords, where the observations on it from any member or members of the Judicial Committee of the Privy Council cannot fail to be of extreme value. Its general aspects, however, may be considered at once. As a preliminary, Mr. CYPRIAN WILLIAMS, in *The Times*, has already entered a caveat against the title, which, as he considers, trespasses on the venerable "De Donis." The present House of Commons, however, does not appear to have a high opinion either of "De Donis" or of the refinements of the conveyancing mind, and has ignored the protest. Perhaps another may be made here, that it is very artificial or even pretentious. When one statute was made at Merton, another at Marlborough, and another at Westminster, the place-names distinguished them, but for hundreds of years all statutes have been statutes of Westminster. The object no doubt is to have a high-sounding title, but it might have been achieved otherwise. In that the bill formulates the relations between the British and Dominion Parliaments, it is, or is the nucleus of, a Constitution of the British Empire. We venture the criticism that, if that Empire is to be deemed still to have an unwritten constitution, it goes too far, but, if it is to have a written one, it does not go far enough. The unity of the British Empire is based in the bill on the allegiance to the Crown, which has no practical effect in a legal sense in the twentieth century. The bonds between ourselves and the Dominions lie in history, in relationship, in affection, and in common ideals. The symbol of the Crown may indicate history and relationship, but there is nothing in the bill as to ideals—hatred of slavery, love of justice and freedom, abhorrence of cruel punishments and customs, etc. We may perhaps refer to our own suggestions as to what might or should constitute the fundamental laws of the British Empire, *ante*, p. 562. In passing the bill this Parliament cannot, of course, bind its successors, or indeed, itself, not to amend or repeal it as occasion serves. And perhaps some old-fashioned people may prefer the sound of "The British Empire" to the "British Commonwealth of Nations," though the latter phrase appears in the schedule to the Irish Free State (Constitution) Act.

In the Name of the Crown.

THE HOUSE OF LORDS, by its decision reported in *The Times* of 20th November, has dismissed the appeal of the Civilian War Claims Association from a decision of the Court of Appeal, which confirmed that of ROCHE, J., dismissing the Association's petition of right for an account of money received by the Crown in respect of war damages suffered by private persons. As stated in our note, *ante*, p. 807, neither ROCHE, J., nor the Court of Appeal could have acted otherwise, being bound by *Rustomjee* v. *The Queen* (1876), 2 Q.B.D. 69, but the House of Lords could have over-ruled this decision. It has, however, confirmed it, and thus, with not only all the courts but all the judges in complete unanimity on the matter, the law laid down is settled beyond all shadow of doubt. As to whether that law is satisfactory is another and very different matter. The money from Germany to compensate private individuals for damage done in war raids, has, presumably, been paid into the Treasury, just as the money from the Emperor of China was in *Rustomjee's Case*. In both instances the money was paid over for the express purpose of such compensation, and no other. On both occasions the Treasury, sheltering under the name and prerogative of the Sovereign, has refused to account for a penny of the sum received. If a great territorial magnate or a powerful corporation or company collected money for specific individuals and then refused to give account of it because it was beneath his or their dignity to account to humbler folk, any judge would make an order against them with a stinging rebuke on the elements of honesty. If our Sovereign, who of course has nothing to do with the matter, cannot from his position express any resentment that his name should be used in this way, his subjects can do so on his behalf, and it may be hoped that members of Parliament will not lose sight of the matter. The notion at the bottom of a petition of right is that the King will do justice, not by legal compulsion, but because it is justice. The official demurrer in the above cases may be regarded as many degrees worse than the plea of the Gaming Act by a defendant, and is the more odious from its association with the name of the Sovereign.

Cheque as Assignment.

A VERY learned judge dealing with a banking case a few days ago asked in the course of the argument if a good assignment was not effected when the drawer of a cheque handed it to the payee, and by him presented to the bank on which it was drawn. Does it not come, he asked, within the principle of the decision of the House of Lords in *Brandt* v. *Dunlop Rubber Co.* [1905] A.C. 454, where it was laid down that to constitute a good equitable assignment of a debt all that is necessary is that the debtor should be given to understand that the debt has been made over by the creditor to some third person, and if the debtor disregards such notice he does so at his peril? The relationship between banker and

customer is that of debtor and creditor, and from this fact, if there were no specific rule to the contrary, it would seem to follow that the giving of a cheque, assuming the account of the drawer is in credit, would operate as a valid assignment of the amount of the cheque. The learned judge had momentarily forgotten the provisions of s. 53, sub-s. (1) of the Bills of Exchange Act, 1882, which says that: "A bill [and this includes a cheque] of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section does not apply to Scotland." Not only is the application of the sub-section quoted excluded from operation in Scotland, the second sub-section provides that "in Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee." Here a marked difference is apparent between the rules of law on the subject obtaining in England and Scotland. In the latter country, in the case of cheques, the importance of the rule as there obtaining, is seen when the customer who has drawn a cheque has some funds in the bank but not sufficient to meet the amount of the cheque. In such a case it is, we believe, the practice of the bank to note that the sum in credit is placed to the account of the cheque. The difference in the law on this subject would seem to involve a good deal more work on the Scottish banker than is thrown on his English *confrère*.

Traffic Signals.

A POINT of considerable importance in respect of the control of traffic has recently been decided by Mr. WALDO R. BRIGGS, stipendiary magistrate at Huddersfield, arising on ss. 48, 49 and 121 of the Road Traffic Act, 1930. A motorist had violated a traffic signal in or near Huddersfield by proceeding a yard or two over a line guarded by a red light. He was summoned under s. 49 of the Act for neglecting or refusing to stop in accordance with the sign lawfully placed on or near the road. The lawful placing of signs on roads is regulated by s. 48, and by the appointment of the Minister of Traffic, duly made under s. 123 of the Act. Both sections, 48 and 49, came into operation on 1st December, 1930. By s. 48 (1) a highway authority may place traffic signs on a road, and by sub-s. (2) these shall be of a prescribed size, colour and type "except where the Minister authorises the erection of a sign of another character." By sub-s. (3) no traffic signs shall be allowed other than as above. By s. 121 "prescribed" means prescribed by regulations. The Minister of Traffic has not yet in fact made regulations prescribing the size, colour and type of signs, at least within Mr. BRIGGS' jurisdiction. He has, however, purported to authorise certain signs, amongst others that which the defendant disregarded, as "signs of another character" under s. 48 (2). Mr. BRIGGS has now held that this authorisation is invalid, on the grounds (1) that there cannot be "a sign of another character" where no character exists from which the Act requires it to be distinguished, and (2) since the authorisation permitted by the statute extends to erection only, it could not be applicable to any sign already in existence on the date of authorisation, as was the case here. It seems clear that the magistrate's decision is in conflict with that of the legal advisers of the Ministry of Traffic, and considerable confusion may result unless and until the Minister prescribes size, colour and type of signal under ss. 48 (2) and 121, or a Divisional Court reverses the above ruling—which, however, is one very closely reasoned. The learned magistrate was also careful to point out that his decision in no way affected prosecutions under s. 11 (reckless or dangerous driving) or s. 12 (careless driving) under the Act. Nevertheless, the question as to how far a motorist ought to be bound by an unlawful signal may be open to doubt. A frontager who objected to motors might, for example, put up a notice imposing a speed limit of 5 miles an hour past his house.

Corporal Punishment of a Daughter of Seventeen.

IN A case at the Tottenham Police Court, it appeared that a father had required his daughter of seventeen years of age to be home by 10.30 every night, and, on an occasion when she had disobeyed him, had, in his own words "spanked her in the usual homely way over his knee." The girl's "young man" on hearing of the matter, had given the father a black eye, which had led to the charge. Obviously, even if the father's procedure to correct his daughter had been wholly illegal, the fact would have been no defence to the assault, and the defendant was duly fined. The magistrate observed that the father had every right to expect the girl to comply with his wishes. Assuming for the present purpose, however, that the father's regulation for his daughter was reasonable, it was the method of enforcing his wishes to which objection was taken, and in this gentle age this may be worth consideration. As every schoolboy, and, still more so, every schoolgirl knows, a husband may not beat his wife, even with moderate severity. This is no doubt the present law, and ESHER, M.R., expressed his opinion in *R.* v. *Jackson* [1891] 1 Q.B. 671, that it was never otherwise (see p. 682). As between Lord ESHER and "Bacon's Abridgement," together with other ancient authorities, however, perhaps the conclusion may be reached that they were more likely to know the law of their own times than he was. If, then, such right of punishing a wife is abolished, does the right continue in respect of a daughter of twenty? That it continues in respect of a son who is still in his father's household is unquestionable, but a well-to-do father who claimed the right to give his grown-up daughter a severe flogging would not find much enthusiasm for his point of view from magistrates or judges. Rustics in certain districts are said still to punish their daughters living at home in this way for immorality, and, unless the severity of chastisement would justify a charge of cruelty, probably they are within their legal rights. In *Re Agar-Ellis* (1883), 24 C.D. 317, a father was held to have the legal right of censoring the correspondence of his daughter of seventeen. The occasions of emancipation when under age are discussed in *R.* v. *Lytchet Matraverse* (1827), 7 B. & C. 226, but there appears to be no case laying down that an unemancipated youth or maiden in his or her late 'teens, living at home, has higher rights than a mere child. The Habeas Corpus cases, however, such as *R.* v. *Greenhill* (1836), 4 A. & E. 624, and R. *v. Howes*, 3 E. & E. 332, indicate that boys of fourteen and girls of sixteen may emancipate themselves by permanently leaving home.

Currency Variation Problems.

A LETTER from a correspondent discusses certain aspects of the currency position as considered in our article "Legal Problems on Currency Variation," *ante*, p. 690. He raises the question of legal tender, there discussed, and makes the suggestion that the creditor should stipulate to be paid, not in gold, which, as he observes in his letter, might violate s. 6 of the Coinage Act, 1870, but in sterling currency to the value of the gold which his loan might have bought at the time. Such a contract would in no wise violate s. 6, nor, as Mr. FELLOWS argues, any doctrine against a mortgagee making a profit. The theory of a mortgage is that, at least to the extent of the mortgaged property and the mortgagor's solvency, the mortgagee shall suffer no loss, and to safeguard against loss due to fall in currency should not violate that theory. A form of mortgage of this kind might be called a gold standard mortgage. The section in the Coinage Act accords with the fact that an English court gives a judgment in a money transaction in terms of sterling only, for only such orders can be enforced by the ordinary writs of execution: see LINDLEY, M.R., in *Manners* v. *Pearson & Son* [1898] 1 Ch. 581, at p. 587, quoted by BANKES, L.J., in *Di Ferdinando* v. *Simon Smits & Co.* [1920] 3 K.B 409, at p. 413.

Criminal Law and Practice.

INVITING A STATEMENT FROM A SUSPECTED PERSON OR ONE WHOM IT IS INTENDED TO PROSECUTE.—The case of *R.* v. *Paterson*, before Mr. Justice Humphreys at the Central Criminal Court on the 23rd November, is of importance on police practice.

A police officer was seeking to discover, on instructions from the Director of Public Prosecutions, who was responsible for certain issues of a paper which had published an incitement to mutiny which was the subject of the indictment being tried.

He said to the accused and others present that he would like to know who was responsible for the issues in question, and one of them replied that he understood they were not required to make any reply unless a charge was preferred. The police officer then remarked that it would be to their advantage to say if they were not responsible.

Counsel for the Crown asked the policeman, in the witness box, "What did they say to that?"

Counsel for the defence objected and the judge would not allow the answer to be given. In his opinion the evidence was clearly inadmissible, as being obtained upon an implied threat. What the officer was seeking was a statement whether the persons present were or were not responsible. If they said they were they would be making a confession, and that confession would have been obtained by means which made it inadmissible in evidence.

When committing for trial, the learned chief magistrate had pointed out the impropriety of the course adopted by the police officer, and Mr. Justice Humphreys agreed with what he had said.

In the event the accused was convicted on proper evidence, which shows that the method taken by the police in the matter was not only incorrect but unnecessary. It is very satisfactory that he should have been checked in an irregularity.

CHARGING TWO OFFENCES TOGETHER.—The case of *Rex* v. *Surrey JJ.; exp. Witherick* (reported in *The Times* of 13th November) is an illuminating example of one of the pitfalls which parliamentary draftsmen dig for the unwary.

Most motorists are now aware that the Road Traffic Act, 1930, introduced (s. 12) a new offence, which is commonly called careless driving. In fact "careless driving" is the marginal note to the section, which one imagines was written by the draftsman. Marginal notes however are, as is well known, no guide to the interpretation of a statute, and what the section actually says is that "if any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence."

In the case mentioned an information had been laid against Mr. Witherick for an offence under the section, setting out the material words of the section in full, and he was convicted, the conviction following the wording of the information. The Divisional Court, however, on application to make absolute a rule for a *certiorari*, had no difficulty in coming to the conclusion that the section defined two different offences, and consequently the information was bad under s. 10 of the Summary Jurisdiction Act, 1848, and the conviction must be quashed. It was suggested during the argument by Swift, J., by way of illustration, that a person might be driving quite carefully on the crown of the road, but yet without reasonable consideration for other motorists behind, who wished to pass.

"THE FUNDAMENTAL PRINCIPLES OF THE PRESENT LAW OF OWNERSHIP OF LAND."

The attention of our readers is called to the announcement on p. ii of this issue, where it is stated that Mr. T. Cyprian Williams' lecture on the above, together with explanatory footnotes and additional authorities, will be published in full in our issue of 12th December, 1931.

Principal and Agent.

THE EFFECT OF AGENT'S BREACH OF DUTY ON RIGHT TO REMUNERATION.

THE recent case of *Harrods Ltd.* v. *Lemon* [1931] 2 K.B. 157, raises a question as to the effect of an agent's breach of duty upon his right to remuneration. Moreover, it draws attention to a danger of the system of "multiple" shops. The plaintiffs—a trading company—though acting throughout in good faith, found themselves employed as agents for both vendor and purchaser in a real property transaction; for the vendor through their estate agency, and for the purchaser through their building department.

The relation of principal and agent is fiduciary in character, and it is a confidence necessarily reposed in the agent that he will act with a sole regard to the interests of his principal, as far as he lawfully may: see the judgment of Lord ALVERSTONE, C.J., in *Andrews* v. *Ramsay* [1903] 2 K.B. 635, at p. 637, and "Story on Agency," p. 262, para. 210. Time and time again the courts have emphasised the principle that an agent must not act in a manner inconsistent with his agency, or, to use the words of COTTON, L.J., in *Boston Deep Sea Fishing Co.* v. *Ansell* (1888), 39 Ch. D. 339, at p. 357, place himself "in such a position that he has a temptation not faithfully to perform his duty to his employer." An agent, by assuming such a position, involves himself in a breach of duty.

An agent who takes a double commission is not faithfully performing his duty to his employer, and the view which the law takes of such conduct has been expressed in many ways. COTTON, L.J., in *Boston Deep Sea Fishing Co.* v. *Ansell*, at p. 357, expressed himself as follows: "If a servant, or a managing director, or any person who is authorised to act, and is acting, for another in the matter of any contract, receives, as regards the contract, any sum whether by way of percentage or otherwise, from the person with whom he is dealing on behalf of his principal, he is committing a breach of duty. It is not an honest act, and, in my opinion, it is a sufficient act to show that he cannot be trusted to perform the duties which he has undertaken as servant or agent." The matter was stated more recently by SCRUTTON, L.J., in *Fullwood* v. *Hurley* [1928] 1 K.B. 498. He said at p. 502: "No agent who has accepted an employment from one principal can in law accept an engagement inconsistent with his duty to the first principal from a second principal, unless he makes the fullest disclosure to each principal of his interest, and obtains the consent of each principal to the double employment." This dictum of SCRUTTON, L.J., qualifies somewhat that of COTTON, L.J., which contains no reference to disclosure and consent.

Such a breach of duty by an agent will give the principal an action for damages for breach of duty and it may disentitle the agent to his remuneration. But it is not in every case where an action for damages would lie that an agent is so disentitled. Such was the decision in *Keppel* v. *Wheeler* [1927] 1 K.B. 577. In that case, the owner of property employed a firm of house agents to sell it. They gave particulars to a tenant of the property, *inter alios*, and procured an offer from a prospective purchaser. They communicated this offer to the owner, who accepted it subject to contract. The tenant then made an offer to the agents to purchase the property from the prospective purchaser at an increased price. In the *bonâ fide* belief that they had performed their duty as agents to the owner when he had accepted the offer of the prospective purchaser subject to contract, they omitted to inform the owner of the tenant's offer. Afterwards final contracts for the sale and purchase of the property were signed and exchanged by and between the owner and the prospective purchaser. The owner brought an action against the agents for breach of duty and the agents counter-claimed for commission on the sale of the property. It was held by the

Court of Appeal that the agents, having committed a breach of duty, were liable in an action for damages, but that, in the circumstances, they were entitled to commission.

ATKIN, L.J., at p. 592, expressed his opinion as follows: "I am quite clear that if an agent in the course of his employment has been proved to be guilty of some breach of fiduciary duty, in practically every case he would forfeit any right to remuneration at all. That seems to me to be well established. On the other hand, there may well be breaches of duty which do not go to the whole contract, and which would not prevent the agent from recovering his remuneration; and as in this case it is found that the agents acted in good faith, and as the transaction was completed and the appellant has had the benefit of it, he must pay the commission."

The general rule is that an agent who commits a breach of his duty to his principal is not entitled to his remuneration; this is irrespective of any damage suffered by the principal: *Rhodes* v. *Macalister* [1923] 29 Com. Cas. 19. That was a case in which the agent for purchasers of the property had accepted a commission from the vendors. BANKES, L.J., said: "It is not a question of damages at all; an agent who commits a breach of duty is not entitled to any remuneration arising out of the transaction in which he has so failed to recognise what his duty to his employer is."

It must not, however, be supposed that this rule is absolute. It does not apply when the agent has made full disclosures to and obtained the consent of both principals: *Fullwood* v. *Hurley*. Moreover, to deprive the agent of remuneration, the breach of duty must go to the whole contract: *Keppel* v. *Wheeler*. It is clear upon the authorities that, if an agent accepts a double employment or a double commission, the breach of duty is one which goes to the whole contract: see the judgment of COTTON, L.J., in *Boston Deep Sea Fishing Co.* v. *Ansell*, at p. 357; *Rhodes* v. *Macalister*; *Andrews* v. *Ramsay*. In such a case, it is immaterial that the principal has not suffered a loss or has taken the benefit of the contract. BANKES and SCRUTTON, L.JJ., in *Rhodes* v. *Macalister*—where the agents had received a double commission—were emphatic on this point. BANKES, L.J., said at p. 20: "There seems to be an idea prevalent that a person who is acting as agent or servant of another is committing no wrong to his employer in taking a commission or bribe from the other side, provided that in his opinion his employer or principal does not have to pay more than if the bribe were not given. There cannot be a greater misconception of what the law is, or what the duty of a servant or agent towards his master or principal in reference to such matters is, and I do not think the rule can too often be repeated or its application more frequently insisted upon." SCRUTTON, L.J., expressed himself as follows: "If he (the agent) does take such remuneration, he acts so adversely to his employer that he forfeits all remuneration from the employer, although the employer takes the benefit and has not suffered a loss by it."

Keppel v. *Wheeler* is a case in which the breach of duty did not go to the whole contract. It is not a case where the agent had accepted a double employment, but where he had failed to inform his principal of a higher offer made before a contract for sale was concluded. Such a breach will give rise to an action for damages, but will not deprive the agent of his remuneration in the absence of fraud or dishonesty. Where there is fraud or dishonesty, there is a se ious breach of duty, and other considerations would apply: see the judgment of BANKES, L.J., in *Keppel* v. *Wheeler*, at p. 583. He said: "I wish to make it quite plain that in my opinion this case must be decided upon the footing that the respondents, the house agents, were acting in good faith in this matter, but were under a misapprehension as to their legal position in reference to their client."

Hippisley v. *Knee Bros.* [1905] 1 K.B. 1, affords another illustration of a breach of duty which does not go to the whole contract. The defendants were employed to sell the plaintiffs' goods. Their remuneration was by way of a lump sum commission, and they were to be paid "all out-of-pocket expenses" to include the cost of printing and advertising. They debited the plaintiffs with the gross cost of, whereas they received discounts in respect of, printing and advertising. The judgment of Lord ALVERSTONE, C.J., at p. 8, is apposite. He said: "If the court is satisfied that there has been no fraud or dishonesty upon the agent's part, I think that the receipt by him of a discount will not disentitle him to his commission unless the discount is in some way connected with the contract which the agent is employed to make or the duty which he is called upon to perform. In my opinion, the neglect is not sufficiently connected with the real subject-matter of their employment. If the discount had been received from the purchasers the case would have been covered by *Andrews* v. *Ramsay*; but here it was received in respect of a purely incidental matter; it had nothing to do with the duty of selling."

The decision in *Nitedals Taendstikfabric* v. *Bruster* [1906] 2 Ch.D. 671, provides a further refinement of the general rule. In that case the agent had many transactions, in some of which he acted honestly, while in others he was dishonest. NEVILLE, J., held that the agent was entitled to his commission in all cases in which he had been honest, but not in respect of the dishonest transactions. The "*ratio decidendi*" sufficiently appears from the following extract from the judgment of NEVILLE, J. He said, at p. 674: "I am asked to say that he (the agent) is to have no commission in any case where he acted properly under his agency as well as in the cases where he acted improperly. Having regard to what is said in *Andrews* v. *Ramsay*, I feel there is a difficulty about the matter, but the conclusion I have come to is this, that the doctrine there laid down does not apply to the case of an agency where the transactions in question are separable, as I think they are in this case, and does not entitle the principal to refuse to pay commission to his agent in cases where he has acted honestly because there are other cases in which the agent, acting under the same agreement, has acted improperly and dishonestly."

The general rule is, therefore, that an agent who has committed a breach of duty is not entitled to his commission. But this rule is subject to these qualifications: (1) In the absence of fraud or dishonesty, a breach of duty which does not go to the whole contract, or which is in respect of a "purely incidental matter," does not disentitle the agent to remuneration, though it may lay him open to an action for damages. (2) Where the transactions are severable, though governed by one contract of agency, the agent is entitled to remuneration in respect of those untainted, though not in respect of those tainted, by his breach of duty.

In *Harrods Ltd.* v. *Lemon*, the defendant employed the plaintiffs—a trading company with many departments—to find a purchaser for certain property, and they found Mrs. C, who agreed to purchase the property subject to contract and subject to a surveyor's report. Mrs. C also employed the plaintiffs, through their building department, to inspect the drains of the property and to estimate for their repair. As a result of the plaintiffs' report, Mrs. C claimed a reduction in the purchase price. Subsequently, after complaint by the defendant, the plaintiffs discovered that they had been acting in this way for both the potential vendor and purchaser, and, by their solicitors, offered the defendant to invite the purchaser to obtain an independent survey. The defendant did not accept the offer, but completed the sale at a reduced price, the reduction being in respect of the drains. The plaintiffs sued the defendant for commission on the sale. AVORY, J., held that the plaintiffs constituted one person in law; that they had committed a breach of duty; but that, as the defendant, with full knowledge of the breach of duty, had completed the contract at the reduced price, the plaintiffs

were entitled to their commission. This decision was affirmed by the Court of Appeal.

It is clear that the plaintiffs were guilty of a breach of duty in engaging in this double employment. Moreover, it was a breach of a character which, in other circumstances, would have disentitled the plaintiffs to their commission. It was a breach which, unlike that in *Hippisley* v. *Knee Bros.*, went to the whole contract. Lord HANWORTH, M.R., pointed out that the Court of Appeal were anxious to say nothing which would derogate from the general rule. He repeated the dictum of JAMES, L.J., in *Parker* v. *McKenna*, L.R. 10 Ch. 96, at p. 124: "It appears to me very important, that we should concur in laying down again and again the general principle that in this court no agent in the course of his agency, in the matter of his agency, can be allowed to make any profit without the knowledge and consent of his principal; that that rule is an inflexible rule, and must be applied inexorably by this court."

The decision in *Harrods Ltd.* v. *Lemon* in no way qualifies the general rule. The basis of the decision is this: At the time the breach of duty came to the knowledge of the defendant, there was no concluded contract between the defendant and Mrs. C. The plaintiffs then made an offer to drop out of the transaction, but the defendant did not accept it. Instead, the defendant went on with the transaction. Lord HANWORTH, M.R., said: "It appears to me that after that acceptance of the situation, it is not possible for the defendant to impute to Messrs. HARRODS that they have lost their right to commission . . ." ROMER, L.J., said: "What she was not entitled to do was to accept the purchaser introduced by Messrs. HARRODS, enter into a contract with that purchaser at a price arranged between her own solicitor and the purchaser's solicitor, and then to refuse to pay Messrs. HARRODS the commission." ROMER, L.J., indicated that, at the time when the defendant discovered the breach of duty, there were three courses open to her: (1) She might have put an end to the contract of agency. (2) She might have refused to accept the purchaser introduced by Messrs. HARRODS. (3) She might have accepted the purchaser on the terms of Messrs. HARRODS' offer. But after the course which she did in fact pursue, Messrs. HARRODS were entitled to their commission.

Harrods Ltd. v. *Lemon* neither limits nor extends the principles laid down in the earlier cases. It merely emphasises the rule that a breach of duty will, in the majority of cases, deprive an agent of his right to commission. If there had been a concluded contract between the defendant and Mrs. C at the time when the breach of duty was discovered, it is submitted that, as the law stands, Messrs. HARRODS would have been deprived of their remuneration. Such a breach of duty goes to the whole contract, and there could have been no question of acquiescence on the part of the defendant.

The Withdrawal of a Prosecution.

RECENTLY four women, one with a courtesy title, were charged on a number of summonses alleging the fraudulent evasion of customs duty on silk goods imported by aeroplane, and with making false declarations in connexion therewith. The charges being withdrawn, certain questions arose as to the procedure on the case coming before THE LORD MAYOR OF LONDON, sitting in the Mansion House Justice Room. The withdrawal of a charge is, very rightly, considered a matter of public interest. To give private prosecutors unreserved power to withdraw charges without publicity would be to allow a free scope for the compounding of offences, with or without the concomitant levy of blackmail.

The general principles are discussed in *Keir* v. *Leeman* (1844), 6 Q.B. 308, to the conclusion (p. 321) that "the law will permit a compromise of all offences, though made the subject of a criminal prosecution, for which offences the injured party might sue and recover damages in an action. It is often the only manner in which he can obtain redress. But if the offence is of a public nature no agreement can be valid that is founded on the consideration of stifling a prosecution for it." That the distinction sometimes runs rather fine may be seen by comparing *Fallowes* v. *Taylor* (1798), 7 T.R. 475, with *Ex p. Bryant* (1863), 27 J.P. 277. In *Fallowes* v. *Taylor* the charge was one of public nuisance in obstructing the navigation of a river; the defendant entered into a bond to abate the nuisance if the prosecution was withdrawn, and it was held that the bond was legal. In *Ex p. Bryant*, a summons had been taken out against the applicant for common assault, and, on the intervention of friends, the prosecutor accepted a sovereign and an apology, and so did not appear on the summons. The justices, though informed of the circumstances, issued a warrant to arrest the applicant, and convicted him. It was held that, the information once being laid, jurisdiction attached, and was not ousted by the agreement between the parties. The case was shortly reported, but a full discussion of the matter appears on p. 289. In *R.* v. *Truelove* (1880), 5 Q.B.D. 336, a case of keeping indecent books for sale, the complainant died before it was heard, and the argument was put forth on behalf of the defendant that that concluded the matter. On this LUSH, J., observed (p. 339) "I need not say that it cannot be desirable in the interests of the public that the complainant should have full control over the proceedings in a prosecution for selling obscene publications, so that it might be in his power to withdraw them and to make terms with the defendant." He held that the case should go on. As an example on the other side, *Fisher & Co.* v. *Apollinaris Co.* (1875), 10 Ch. Ap. 297, may be cited, a case as to the unauthorised use of a trade mark, where a prosecution was withdrawn, the person injured having the choice between a civil and criminal remedy.

The consent of magistrates to the withdrawal of a charge in a case of a public nature, however, is not necessary where the Attorney-General enters a "*nolle prosequi*." His power to do so is subject to no control whatever, see *R.* v. *Comptroller of Patents* [1899] 1 Q.B. 909, at p. 914. Obviously the mischiefs which might arise in the stifling of a private prosecution could not be supposed to do so in his case. A. L. SMITH, L.J., observed in the above reference that the Attorney-General alone could enter a "*nolle prosequi*," but it may be suggested that s. 35 of the Inland Revenue Regulation Act, 1890, was not present to his mind at the time. That section gives power to the Commissioners of Inland Revenue to stay proceedings commenced by them, and does not appear to be controllable by a court in any way. This power can also be exercised by the Commissioners of Customs and Excise.

If, however, a court once has seisin of a case of this nature, it is quite clear that it must be satisfied (1) that the power given by s. 35 is exercisable in respect of it; and (2) that it has been exercised, and the proper procedure by which these facts are shown to the satisfaction of the court would appear a matter for the particular court to decide. Though there is no doubt that one method (and probably the most satisactory) of dealing with such a case would be for the case to be called, and for counsel for the Commissioners to prove as a matter of law that the power applies, and to state as a matter of fact, and prove, if required, that it has been exercised. For this purpose the names of the persons charged and the nature of the charge would be made public, and it is apprehended that every newspaper in the land might lawfully publish particulars of them. The reason for withdrawing the charge, however, need not be made public, and a newspaper publishing details not revealed in court would not be protected in doing so by s. 3 of the Law of Libel Amendment Act, 1888. It is submitted, however, that s. 3 (as to "a fair and accurate report") would apply to the whole proceedings in open

court until the formal withdrawal was notified to and accepted as a fact by the bench.

Whilst on this subject it is interesting to note a parliamentary question and the answer thereto which appears in Hansard for the 17th of this month at p. 674, viz.:—

> Mr. BATEY asked the Chancellor of the Exchequer why the Commissioners of Customs and Excise withdrew the summonses down for hearing at the Mansion House, on 6th November, 1931, against four ladies charged on thirty-eight counts of defrauding the customs; and what reparations, if any, were made by them?
>
> Mr. CHAMBERLAIN: Section 35 of the Inland Revenue Regulation Act, 1890, specifically enables the Commissioners of Customs and Excise to stay proceedings at their discretion, a power which is exercised in suitable cases. In the case referred to this power was used on consideration of all the circumstances of the case, the claims of the Commissioners having been fully satisfied.

Swing Bridge not a Highway.

IT is well settled that a highway authority cannot be made liable in damages for an injury arising out of a non-feasance on the highway, the only remedy in such a case being by way of indictment against the parish or township which has made default. But what if the accident occurs on a place which admits of public passage but is not a highway in the sense of being a road dedicated to the public use and repairable by the inhabitants of the parish or township through which the road runs. Such was the point of contention in *Guilfoyle* v. *Port of London Authority* (75 SOL. J. 763). In that case the plaintiff was injured by tripping over a large nail projecting from the footway while crossing over a swing bridge, which the defendants were under a statutory duty to maintain in repair. The swing bridge had been built shortly after 1875 in pursuance of s. 7 of the London and St. Katherine's Dock Act, 1875 (38 & 39 Vict. c. cliii) which required the dock company to construct a bridge to provide a means of communication between highways terminating on opposite sides of the dock, and in 1908 it became the property of the defendants whose duty to maintain the same was set out in the Port of London Authority Consolidation Act, 1920 (10 & 11 Geo. 5, c. clxxiii) s. 378, which provided that the defendants should maintain and keep in repair certain "works" of which this bridge was one, and s. 380 of the same statute provided that the defendants should permit the public to use the bridge at all times except when it was required to be swung open for lock traffic. It was contended by the defendants that the swing bridge was part of a highway and therefore no action for damages for a mere non-feasance could lie against them. Mr. Justice HUMPHREYS, however, held that the bridge was not in any ordinary sense a highway at all; if it had been an ordinary bridge which could not be moved and which was always open the position would have been different, but here the right of the public was merely to use the bridge when it was not required to be swung open for lock traffic. In these circumstances, therefore, the swing bridge was not a highway and the defendants were liable in damages for injuries sustained by the plaintiff through their non-feasance. Incidentally, in the above case, the defendants were permitted to, and did in fact, impose tolls for the use of the docks. Could they, therefore, be regarded as an ordinary highway authority who are unable to make any profit from their undertaking? In *Blundy, Clark & Co. Ltd.* v. *London and North Eastern Railway Co.* [1931] 2 K.B. 334, the defendants, who were the proprietors of a canal, were under a statutory duty to maintain and repair a certain lock on their canal, and were also authorised to take tolls from persons using the navigation. The lock having collapsed without any fault of the proprietors, the defendants were held liable for damages caused by unnecessary delay (a mere non-feasance) in repairing the dock, the Court of Appeal taking the view that the position of a public authority unable to make profits was not analogous to that of a company taking tolls for their services.

Company Law and Practice.

CV.

RESIGNATION OF DIRECTORS.

ARTICLE 77 of Table A of 1908, which dealt with the vacation of the office of director, made no provision for resignation, and this omission was frequently found in practice to be inconvenient; the corresponding clause of Table A of 1929 (Art. 72) does provide that the office of director shall be vacated if the director resigns his office by notice in writing to the company. The decisions of the court with regard to re ignation are not many, but there are two in particular which are deserving of some attention.

The first of these is *Glossop* v. *Glossop* [1907] 2 Ch. 370. In that case there was an article providing, in terms similar to those of Table A of 1929, that the office of director should be vacated if the director resigned by notice in writing, but there was super-added to this a proviso that the vacation of office should not take effect unless the directors passed a resolution, within six months from the happening of the event whereby such director vacated his office, to the effect that the director had vacated his office. The article next following this last-mentioned one provided that the office of managing director should be vacated upon the happening of any of the contingencies (one of which was the one as to resignation by notice in writing) mentioned in the preceding article. The company had three managing directors, who were such by virtue of the articles; and, in consequence of a dispute between two of them, A wrote a letter to the company in which he asked it to accept his resignation as managing director; seven days later, and before any meeting of directors had been held since his earlier letter, he wrote a further letter to the company saying that his previous resignation had been made under a misapprehension, and that he withdrew it.

Notwithstanding the receipt of both these letters, a special meeting of directors was held, shortly after the receipt of the second, by the company, and at this special meeting a resolution was passed declaring that A had vacated his office. A attended this meeting, and tendered his vote against the resolution, but his vote was not accepted, and he was not allowed to join in the business before the board. A thereupon brought an action claiming (*a*) a declaration that he still held the office of managing director, and (*b*) an injunction to restrain the other directors from excluding him from the office of managing director or from excluding him from acting as a director, or from excluding him from meetings of directors. At the hearing of the motion for an interim injunction it was admitted by the defendants that A was still a director, but it was contended that he was no longer managing director. NEVILLE, J., held that, on the true construction of the articles, the resignation depended on the notice in writing, and not upon any acceptance of that resignation by the company, because the company could not refuse to accept the resignation. That being so, it followed that a director could not withdraw a resignation, once he had given the proper notice in writing, without the consent of the company, properly exercised by its managers. This consent had not been given, and, therefore, his managing directorship had ceased.

As this consent had not been given, it was not in that case necessary further to pursue the line contained in the suggestion of NEVILLE, J., that a resignation could be withdrawn with the consent of the board, but this seems to be open to some doubt.

In *Latchford Premier Cinema* v. *Ennion* [1931] 2 Ch. 409, the relevant article provided that the office of a director should *ipso facto* be vacated if, by notice in writing to the company, he resigned that office. At the annual general meeting of the plaintiff company on 10th February, 1931, two of the directors orally tendered their resignations as directors, and these resignations were accepted by the meeting. These directors, however, subsequently alleged that they were still directors, because the articles necessitated a resignation in writing. BENNETT, J., however, rejected this argument, and granted an injunction to restrain these two gentlemen from acting or purporting to act as directors of the company. The grounds for this decision are that, as an ordinary written agreement for service which requires written notice can be verbally terminated by mutual agreement, so can an agreement between a company and its directors. This involves the proposition that the provision in the articles as to notice in writing is not to be treated as being exclusive, but that it still leaves the way open to other methods of resignation by mutual agreement between the parties. That being so, an acceptance by the company in general meeting would meet the case; but this is still quite distinct from the suggested withdrawal of the written notice by consent of the board in *Glossop* v. *Glossop, supra*. In that case there was an express provision which was held to have the effect that, where there was a proper resignation in writing, such resignation was effective to determine the appointment. It is difficult to see why permission to withdraw such a resignation (the effect of which would be, practically speaking, to reinstate the resigner as a director) would not amount to an alteration of the articles, and that such permission could, therefore, only be properly given by means of a special resolution of the Company. However, NEVILLE, J., did not actually have to decide this point, but it is submitted that the suggestion made by him that the directors could properly permit the withdrawal of such a resignation ought to be treated with caution as going, perhaps, further than the law warrants.

(*To be continued.*)

A Conveyancer's Diary.

The Land Charges Registers.

In the issue of this journal for 14th November there appeared an article on this subject by Sir John Stewart-Wallace, which must be of great interest to the profession. Although the learned Chief Land Registrar has not anything to tell us which was not known to most of those engaged in the practice of conveyancing, his article has a special significance coming from his pen, and will be welcomed as an authoritative confirmation of the opinion widely held of the failure of land charges registers to fulfil their purpose and, in fact, the progressive futility of those registers.

Sir John rightly points out that there are only two forms of registration of charges not being part of and incident to registration of title. The registers must either be name registers in which entries are made under the name of the owner of land whose property is affected or land registers in which entries are made against the land and involving the preparation of a complete cadastral map of the whole of the country. The latter is ruled out, because of the great expense attaching to it which, indeed, no one would think it worth while to incur (assuming it to be practicable) unless as incident to a system of registration of title.

Consequently the learned Chief Land Registrar says there only remains the names registers, with which we are all so familiar.

Now before 1926 we had the names registers, registers of *lis pendens*, annuities, writs and orders, deeds of arrangement and land charges. No one suggests that these registers were altogether satisfactory. They were open to much the same objections that apply to the present registers and the alphabetical index, but the number of entries was small and searching was a comparatively simple matter. No doubt even then mistakes were made. Names were not correctly stated or became changed with the result that a search could never be regarded as absolutely conclusive. Nevertheless the system worked reasonably well so long as the number of entries was kept within a small compass.

Then came the 1925 legislation, which endeavoured to apply on a colossal scale a system which was inherently defective even to meet the small demands up to that time made upon it, but when required to stand the strain of enormously increased and constantly increasing burdens naturally broke down and became, as it is to-day, practically ineffective.

Of course in a great many cases a search will reveal all the charges that are registered, but unless it can be relied upon to do so in every instance (allowing a reasonable margin for clerical and other errors) the register is for the purposes for which it is intended of little practical use.

We are told that at the present time there are more than a million names on the alphabetical register, and the number is increasing from day to day. It is obvious that such a register must in time sink under its own weight.

Sir John Stewart-Wallace outlines some of the efforts which have been made to render the registers and the index somewhat more effectual by, as he says, establishing "a sort of hybrid register in which the names of the estate owners are, *so far as possible*, linked with the land." He shows, however, that those efforts cannot be of much avail. The Rules provide for the parish, place or district in which the land affected is situated being shown in connexion with the name of the owner and (although not provided for in the Rules) short descriptions are, where feasible, entered. Whilst such measures may and no doubt do increase the value of the registers and the index (which is arranged lexicographically and not merely alphabetically as provided by the L.C.A.), they are mere palliatives and do not go to the root of the trouble.

What, then, is the remedy? I do not see any, except to reduce the number of the entries. That would not, of course, cure the defect in the system, but it would at least render the register of some practical use within the limits of its application.

The only effective way which suggests itself to me of doing that would be to repeal Class C and Class D of s. 10 (1) of the L.C.A. The inclusion of those charges within the registration scheme is responsible for the register having become unwieldy and will in time render it useless.

It has been suggested to me by an eminent conveyancer that we may come to the point where we shall have a common form condition of sale providing that a purchaser shall assume that no entry in the register affects the land offered for sale. Such a condition might be binding, for it is obvious that in many cases it would be impossible to tell from the registers whether any entry in the name of a vendor related to the property or not, and when the entries were numerous, impractical to ascertain. The condition might be varied. Say, for example, that the vendor's name is John Smith—the condition might make the purchaser assume that the vendor was not the same person as any person of that name appearing on the register. The suggestion is ingenious and capable of development.

The learned Chief Land Registrar concludes his interesting article by endeavouring to justify the registers on the ground that "if in many cases they have little positive efficacy, they have in all cases an important negative effect." He considers that the mere existence of the registers has a strong deterrent effect, in that "a vendor who but for their existence might fraudulently suppress matters which a search in them is intended to reveal will hesitate not to disclose them. The risk of immediate detection is too great."

It may be so, but the longer the registers are kept as at present and the more unwieldy they become, the less will be the chance of detection, and the fraudulently inclined person will soon find out in what cases there is "little positive efficacy" in the registers.

Appointment of New Trustees for the Purposes of the Statutory Trusts.

I had not intended to return to this subject, but the letter from Messrs. "Watling," published last week, calls for some notice from me.

I am afraid that I cannot reply to our correspondent's letter without repeating what I have said before, and I do not want to go over the same ground again.

I am far from saying that the view expressed by Messrs. "Watling" is not in accordance with common sense, but I am unable to reconcile it with the decisions in *Re Flint* and *Bernhardt* v. *Galsworthy*.

In discussing the subject, it is necessary to start with the hypothesis that those cases were rightly decided. That being so, I do not see how Messrs. "Watling" can substantiate their contention that the statutory trusts are "added to the trusts of the instrument or that they are to be implied therein." But I agree that the statutory trusts are "substituted for" the trusts of the instrument in the sense that the former entirely supersede the latter, not as trusts of the instrument, but as trusts imposed by statute independently of the instrument.

Landlord and Tenant Notebook.

Covenant to do Outside Repairs.

In "Current Topics" of the issue of this journal of 17th June, 1879 (Vol. 23, p. 656), a paragraph commenced with the question: "What does the landlord undertake when he consents to do 'external' or 'outside' repairs?" The writer then went on to discuss the effect of *Ball* v. *Plummer*, which has not been reported in any of the Law Reports; an account of the case will be found in *The Times* of 17th June, 1879. The decision was to the effect that windows fall within the scope of a covenant to do external repairs; a window was, as Bramwell, L.J., put it, "part of the skin of the house." THE SOLICITORS' JOURNAL pointed out that when premises included a greenhouse, the landlords might well insert an express exception.

Presumably arrangements of this nature, which on the face of them contain the germs of litigation, are generally entered into in a spirit of compromise, and subsequent disputes are settled in the same spirit. At all events, reports on the effect of a covenant apportioning responsibility in this way are very few. *Doe d. Wetherell* v. *Bird* (1833), 6 C. & P. 195, sheds a little light on the question, but the covenant in that case was in fact an extremely comprehensive tenant's covenant—to put the messuage and all and sundry the houses, outhouses, bakehouses, brick walls, pales, rails, etc., in repair, and from time to time to repair, uphold, etc.—and the point argued was whether it was broken by the demolition of a brick wall separating a courtyard in front of the house from one at the side. The decision on this point was that such an act clearly constituted a breach of the covenant to uphold brick walls.

Nearer the point is *Green* v. *Eales* (1841), 2 Q.B. 225, in which the landlord had covenanted to repair all the external parts of the demised premises in every respect whatsoever, except the glass and lead in the windows. A party wall became an outside wall owing to the demolition of the adjoining house, a demolition performed by the local authority under a local statute. The wall then became unsafe and the tenant repaired it and claimed the expenses from the landlord. The defendant pleaded that the plaintiff had not waited a reasonable time, but as there had been a refusal by defendant, this failed; and on the question whether the wall was an external part the court held that it certainly had become one, and they thought it always had been one. The L.P.A., 1925, s. 38, and 1st Sched., Pt. V, 1, now defines interests in party walls where definition is necessary.

Since the question was raised and the advice given in this Journal in 1879, only one decision touching the matter has been recorded. This was *Boswell* v. *Crucible Steel Co.* [1925] 1 K.B. 119, C.A., which shows that the warning note was rightly sounded. The premises were a factory, and the front consisted largely of plate-glass windows. The tenant was under covenant to keep the inside, including landlord's fixtures, in good repair; the landlords had covenanted to repair the demised premises with all necessary reparations, except such as were agreed to be executed by the lessee. Each claimed that the other was liable for the windows. The Court of Appeal were unanimous in holding that windows were not fixtures, and that they were "part of the skin of the house"; Atkin, L.J., also mentioned that if they had been fixtures he would have been inclined to construe the tenant's covenant as extending to fixtures inside the premises only.

Whether these authorities afford sufficient guidance for the solution of problems arising in present-day practice remains to be seen. One possible difficulty which might arise would be, who would be liable for the repair or replacement of a defective service pipe? I have known a question of this nature to arise in London when the pipe was renewed by order of the Metropolitan Water Board. The landlord's covenant to repair would override a tenant's covenant to pay outgoings (*Howe* v. *Botwood* [1913] 2 K.B. 387); but in this case it was limited to external repairs. The pipe, of course, went underground from the main under the street to the interior of the building. The parties, being on good terms, asked the plumber to apportion the cost of the work as between the length of piping on each side of a point below the wall; but it might have been arguable whether the "skin of the house" was supposed to extend beneath the ground level.

A form of covenant in fairly common use—it occurs in the leases of at least one London estate—is one by which the tenant covenants to keep the premises, "except the roof," in tenantable repair. It is an advantage to a tenant not to be responsible for the roof; but if his otherwise implied duty be thus excluded, it cannot be confidently asserted that any liability is imposed on the landlord.

Our County Court Letter.

PROOF OF RIGHTS OF WAY.

THE evidential value of a track has been considered in two recent cases. In *Ridley* v. *Jackson*, at Spilsby County Court, the claim was for damages and an injunction against breaking a fence and trespassing upon land at Chapel St. Leonards. The parties were owners of adjoining properties, separated by a road, and had bought from a common vendor in 1930 and 1927 respectively. The plaintiff relied upon her conveyance, as (1) the plan therein showed no right-of-way for the defendant, (2) the exception therefrom of "other privileges now enjoyed" merely referred to rights of light, air, drainage, etc., without implying any public right-of-way or private easement giving access to the shore. The defendant's case was that (1) he was entitled to the right-of-way (*a*) by express grant in his conveyance, which was prior to the plaintiff's, (*b*) by prescription, as the right-of-way had existed from time immemorial, and had been a smugglers' path, (2) he sometimes had forty visitors in his boarding-house, and the alternative path offered was too steep. Corroborative evidence was given by the Commissioner of Sewers, and by the defendant's predecessor in title, but it was pointed out for the plaintiff that the Lindsey County Council had disclaimed the track as

a public path. His Honour Judge Langman observed that there was no unity of possession, and the road was never claimed as a public right-of-way, but it was a well-defined track, and was an easement which passed without mention in the conveyance. The defendant was therefore entitled, both by prescription and by grant, to use the path, and (as any claim to roam over the sandhills was disavowed in court) the allegation of trespass failed. Judgment was therefore given for the defendant, with (by consent) two-thirds of the costs of the action, not exceeding £15.

In *Griffiths* v. *Evans*, at Aberayron County Court, the claim was for £1 damages for trespass and for an injunction against taking a horse and cart through a cornfield. The plaintiff's case was that, even if the defendant had taken the cart through the field for five years without permission, no complaint had been made because they were neighbours. Corroborative evidence was given by a former owner, who stated that there had never been a permanent track through the field, and neighbours were always asked to keep close to the hedge. The defendant's case was that the plans of the property showed a distinct track through the cornfield, and no objection was raised until this year, when the plaintiff ploughed up the field and track. Evidence of user as a public highway for fifty years was given by nine witnesses, but an old resident admitted that, when the corn was high, she avoided the track. His Honour Judge Frank Davies held that the only right-of-way was along the hedge, and any user of the field had been wrongful and secret. Judgment was therefore given for £1, and an injunction was granted against user of the track through the field, without prejudice to the user of the path by the hedge.

The validity of an arbitrator's award was recently considered in *Weaver* v. *Sidaway*, at Stourbridge County Court, in which damages and an injunction were claimed by reason of an encroachment. The parties were neighbours, and the plaintiff's case was that (1) a wooden building, erected by the defendant, overstepped the boundary line, (2) the matter had been referred, by mutual consent, to the Earl of Dudley's estate agent, who decided that there was an encroachment of 13½ inches. The defendant counter-claimed a right-of-way, on the grounds that (1) the width of the pathway had been reduced by 18 inches, by reason of an alteration in the hedge by the plaintiff, (2) the award was not binding, as the arbitrator had exceeded his instructions and decided matters outside the scope of his reference. His Honour Deputy Judge Pritchett observed that the defendant had been somewhat defiant in not accepting the award, and, as an encroachment had been proved, judgment was given for two guineas as damages in lieu of an injunction, with costs and a certificate for counsel, the counter-claim being adjourned. Compare a "Current Topic" entitled "Ordnance Map as Evidence" in our issue of the 5th September, 1931 (75 Sol. J. 592) and *Clarke* v. *Barnes* [1929] 2 Ch. 368.

Reviews.

Chalmers' Sale of Goods Act, 1893, *including the Factors Acts*, 1889 *and* 1890. Eleventh Edition. By Ralph Sutton and N. P. Shannon, Barristers-at-Law. Demy 8vo., pp. li, 218 and (Index) 40. 1931. London: Butterworth and Co. (Publishers) Limited. 15s. net.

The new edition of this well-known work, which is the first to appear since the lamented death of Sir Mackenzie Chalmers, the draftsman of the Sale of Goods Act, 1893, and the learned commentator who brought out the ten previous editions, is assured of a warm welcome from lawyers and business men alike. Although the scope of the work precludes that exhaustive discussion of the numerous cases, such as we find in the classic and ample pages of "Benjamin on Sale," it is in the highest degree practical in the notes, which are masterpieces of condensation, appended to the various sections. Few know the law as to the sale of goods so thoroughly as did Sir Mackenzie Chalmers, and he did not limit his researches to English law. Again and again the reader is referred to some passage in "Pothier," or to the fact that some foreign code differs from or accords with our law on some particular point. In addition, his notes in Appendix II on the use of the terms, "Contract," "Condition" and "Warranty," have a curious as well as a practical interest, and they attest the width of investigation which the learned commentator bestowed upon the work. In a new edition of the book the reviewer naturally looks to see whether the decisions pronounced since the date of the preceding edition have been incorporated, and how the process of incorporation has been carried out. The learned editors in their preface say quite truly that "the task of editing a book of this kind is necessarily difficult," and then they add that "it is easy, no doubt, to take the line of least resistance and do nothing more than add references to the cases decided since the last edition, but unfortunately this is the first stage in that process of decay called by the late Lord Finlay 'dying of fatty degeneration.'" No doubt, the mere addition of new references preceded by the words "see also," scarcely satisfies the obligation under which the editors of a legal work come; but after all it is by the proper incorporation of new decisions, that is to say, their introduction in the appropriate sections, and bringing out their effect upon previous cases, that new editions are of value to the practitioner.

This edition appears to satisfy this test, although occasionally a note might with advantage have been expanded. For example, in notes to s. 6—the section which deals with the position where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract was made—it is stated that the view expressed by Chalmers, that where a part only of the goods has perished at the time when the contract was made, the contract is void, "has been approved *obiter* by Wright, J., in *Barrow, Lane & Ballard* v. *Phillip Phillips and Co.* [1929] 1 K.B. 574 (sale of 700 bags of nuts, 109 of which had perished before contract); but see *In re Wait* [1927] 1 Ch. 606, at p. 631." The practitioner would have valued the note more if the editors had indicated what he would see in *In re Wait* which in any way affects the soundness of the view taken by Wright, J. So far as we can discover, it does not touch the particular point.

The Law of Negotiable Instruments. By F. Raleigh Batt, LL.M., Barrister-at-Law and Professor of Commercial Law in the University of Liverpool. London: Longmans, Green & Co. 1931. pp. xx and (including Index) 156. 5s.

This compact little volume is No. 3 in the series of text-books in commercial law issued under the general editorship of Professor R. A. Eastwood, who contributes an introduction commending the work of Professor Batt as combining accuracy with clear exposition. The work merits the commendation thus bestowed upon it, for we know of no other book which treats of the law of negotiable instruments so compendiously and yet so clearly as this does. To the student desirous of grasping the principles embodied in the Bills of Exchange Act, 1882, especially if he acts upon the author's suggestion and reads the book with the text of the statute before him, it should prove of real value. We would single out particularly the paragraphs in Chapter IV, where the distinction between bills given for no consideration and those given for an illegal consideration is clearly explained. In the same chapter the author gives an excellent piece of advice when he says: "Never take a cheque or bill without securing the transferor's signature." Throughout the book the language is clear, although we note that at least on one occasion the author has recourse to somewhat abstruse philosophical terms, as where

(p. 3) he says that "by a sort of legal though metonymical realism, at the dictation of commercial necessity, the English common law, adopting the precedent of the law merchant, has incorporated negotiable instruments . . . into the currency." We can heartily recommend the little book as an excellent introduction to the subject of bills, promissory notes and cheques.

Truth. The Fifty-fifth Christmas Number.

Truth's Christmas Number contains an abundance of entertaining contributions in prose and verse with innumerable clever illustrations. A leading feature is "The Tale of the Ten"—a divertingly ironical record of the formation of the National Government presented as a translation of a recently discovered Latin MS. "The Changeling" is the title of an amusing skit on the Gold Standard, and among other contributions are "Dave's Cave," "Holidays in Hooverland," "Dr. Johnson Goes Hiking," and "Fables for the Feeble." The number also includes three of the Queer Stories for which *Truth* is famous and a coloured cartoon, "When Shall We See It?"

Books Received.

The Lawyers' Companion and Diary, and London and Provincial Law Directory for 1932, No. 1, with Tables of Costs, &c. Edited by MICHAEL E. ROWE, B.A., LL.B., Barrister-at-Law. Eighty-sixth annual issue. London: Stevens and Sons, Ltd. No. 1, with two days on a page, plain, 7s. 6d. net.

Income Tax. By E. E. SPICER, F.C.A., and E. C. PEGLER, F.C.A. Eleventh Edition. Edited by H. A. R. J. WILSON, F.C.A., F.S.A.A. 1931. Medium 8vo. pp. xxvii and (with Index) 498. London: H. F. L. (Publishers), Ltd. 10s. 6d. net.

Corporal Punishment. An Indictment by GEORGE BENSON, M.P., and EDWARD GLOVER, M.D. With an Introductory Note by CICELY M. CRAVEN, Hon. Secretary, Howard League for Penal Reform. London: Howard League for Penal Reform. 6d. net.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XIII, Part IV. November, 1931. London: Society of Comparative Legislation. 6s. net.

The Lawyer's Remembrancer and Pocket Book. By ARTHUR POWELL, K.C. Revised and edited for the year 1932 by J. W. WHITLOCK, M.A., LL.B. Royal 18mo. pp. iv and 227 (and Diary). London: Butterworth & Co. (Publishers), Ltd. 5s. net.

Criminal Justice in England. By PENDLETON HOWARD, LL.B., Ph.D. 1931. Demy 8vo. pp. xv and (with Index) 436. New York: The Macmillan Company. 15s. net.

Principles of Mercantile Law. By J. CHARLESWORTH, LL.D. (Lond.), Barrister-at-Law. Second Edition. 1931. Demy 8vo. pp. xxxvi and (with Index) 375. London: Stevens and Sons, Ltd.; Sweet & Maxwell, Ltd. 8s. net.

Roscoe's Admiralty Practice. Fifth Edition. By GEOFFREY HUTCHINSON, M.A., Barrister-at-Law. 1931. Royal 8vo. pp. lxvi and (with Index) 577. London; Stevens & Sons, Ltd. Sweet & Maxwell, Ltd. 42s. net.

Legislative Drafting and Forms. By Sir ALISON RUSSELL, K.C. Third Edition. 1931. Demy 8vo. pp. (with Index) 504. London: Butterworth & Co. (Publishers), Ltd. 30s. net.

The Economic Uses of International Rivers. By HERBERT ARTHUR SMITH, M.A., Barrister-at-Law. 1931. Demy 8vo. pp. ix and (with Index) 224. London: P. S. King and Son, Ltd. 10s. 6d. net.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

The 29th November, 1801, was the birthday of Lord Chancellor Hatherley. His schooling at Winchester came to an abrupt close when he was expelled along with the other senior prefects for organising a rag on such a grand scale that the authorities saw fit to call in the military. His first acquaintance with the law was at the Old Bailey, whither he accompanied his father, Sir Mathew Wood, an alderman of the City of London, who subsequently became Lord Mayor. The wholesale death sentences which he witnessed disgusted him, though he was attracted to the profession of the law. He went to the Chancery Bar, where he built up a good practice, and in 1853 was appointed a Vice-Chancellor. It was his habit never to deliver a written judgment, and this once drew down on him a public expression of disapproval from Lord Campbell, then Chancellor. In due course, however, he himself sat upon the Woolsack, and a titanic picture of him in robes of office has recently replaced in the great hall of the Law Courts a vast and irrelevant painting of the Anti-Slave Trade Convention.

THE DOCTOR'S RETORT.

When Mr. Justice McCardie remarked during a recent case that he had never before seen a doctor embarrassed, he endorsed the universal experience of legal practitioners as to the resource and imperturbability of their medical brethren. There was an amusing illustration of these gifts in a certain child murder case in which the defence was accidental strangulation by the umbilical cord. When the doctor called in support of this proposition came to be cross-examined, counsel said: "I take it from the evidence that you have just given that you are a specialist in obstetrics." "Oh, no, just a very humble G.P., but I did scrape through an exam. in that, among other subjects." "You were in the Navy, I think, during the War?" "Yes, for the duration." "Oh," commented the barrister, sarcastically, "I suppose it wasn't there that you learned so much about child birth." "No," retorted the doctor cheerfully, "but that was where I learned all about naval cord."

THE LONGEST CHARGE.

In a case which came up recently at Westminster, prosecuting counsel told the court that there were nine hundred and ninety-nine charges in all against the prisoner. After that startling computation, the sum of £1,400 involved seems comparatively insignificant. Here is matter which in the not very remote past, legal prolixity might have drawn out literally by the rod, pole or perch. The monster indictment in *O'Connell's Case* is a notorious example, but it was dwarfed by the one in the little-remembered trial of *The Queen* v. *Selsby and Others*, a trades dispute prosecution in 1847. There were a score or so of defendants, and the indictment was no less than fifty-seven yards long One of the defending counsel made very merry at the "length and breadth" of the accusation. In the course of a witty speech, he remarked: "In the time before the Flood, when men lived to be eight hundred years old and some thirty or forty years on the one side or on the other was of no consequence, this might have been light and pleasant reading, but we have shorter lives and live in railway times and must do everything in haste."

THE VICE-CHANCELLOR'S EGG.

The clerk at Barry Police Court was recently struck on the face by an egg well and truly hurled by a man in court. Such an assault is unusual enough to form a pretext for repeating, for the benefit of any who may not have heard it before, the happy retort of Vice-Chancellor Malins on the memorable occasion when a dissatisfied litigant flung an egg at him as he was leaving the bench. "This must have been intended for my brother Bacon in the next court," he remarked. But that threatens at any moment to rank with the curate's egg.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Administrator of Felon's Estate—Compounding with Creditors.

Q. 2345. A has been convicted on a charge of felony and sentenced to three years' penal servitude. His estate (which is very small) is insolvent, but no bankruptcy or other proceedings have been commenced. A petitioned the Home Secretary for the appointment of B as administrator of his estate under the provisions of the Forfeiture Act, 1870. The Home Office wrote to B to enquire if he was willing to act as administrator. B then wrote to the Home Office pointing out that the estate was insolvent, and received a reply stating that the Secretary of State "was still of the opinion that unless bankruptcy proceedings are pending, which he gathers is not the case, the situation would be most appropriately met by the appointment of an administrator." B has now been appointed administrator. The Forfeiture Act, 1870, does not appear to make any provision for an insolvent estate.

(1) Must B make the estate bankrupt?

(2) If bankruptcy can be avoided, what course B should take in order to secure that A's estate obtains a full release and discharge from each creditor for the amount of the debt due to him in consideration of the payment of such composition as the estate may be able to pay. If possible, B wishes to avoid bankruptcy proceedings. If course (2) is open, must B adopt any particular course of procedure in the winding up of the estate, particularly as to the giving of notices, etc.? A reference to a work on the subject and precedents will oblige.

A. We have never heard the point raised previously. Our opinion is not therefore based on any authority other than our interpretation of the statute.

(1) We do not see any obligation on the part of B to put the estate into bankruptcy, and we know of no process by which *he* could do so, save by getting A to petition. In such a case it would seem that s. 7 would apply, though it might be necessary for B to get his appointment revoked by the Home Secretary under s. 9 in order to permit of the estate automatically vesting in the trustee in bankruptcy.

(2) It appears to us that as by s. 17 B, as administrator, has a right to make payments in priority, he may make an arrangement with all the creditors who are willing to agree to it that, in consideration of his not exercising these powers but realising the estate and paying all creditors *pro rata*, the creditors will accept such payments in satisfaction. Of course, a release under seal by any creditor would be effective apart from mutual arrangement. If, therefore, it is feasible, the arrangement should be embodied in a deed to be executed by all the creditors. The opinion is given that such an arrangement is not an arrangement by a debtor with his creditors so as to come within the Deeds of Arrangements Act, 1914. Of course, an arrangement would not bind any creditor who did not assent.

Commercial Traveller's Notice.

Q. 2346. In October, 1929, A was engaged by a firm as a commercial traveller at a weekly wage of £6 plus expenses. No mention or agreement was made as to the length of notice required to terminate the employment, which fact the employers admit. On 1st November, 1930, A received a letter (following discussion on the matter) from the firm stating that he was to receive a commission of 5 per cent. on his turnover above £1,500 *per annum* and wages during sickness. In May, 1931, A agreed (owing to trade depression) to a temporary reduction of wage; consequently his wage was reduced to £5 per week. The matter of commission was not mentioned and apparently was not in the mind of either party at the time. On the 28th August, 1931, A received a letter from his employers giving him one week's notice from that date, to which A objected. Is A entitled to three months' notice or damages on the basis of such notice? It is submitted that the reduction in wage agreed upon did not affect the arrangement to pay commission which would not become due or ascertainable until a year after the letter dated 1st November, 1930, but the employer has in meantime prevented the traveller from earning same. Reference may be made to *Grundon* v. *Master & Co.*, 1 T.L.R. 205, which seems in point. Has this case been overruled, followed or commented upon? Can any reference be given to other cases affecting the points raised?

A. The letter of 1st November, 1930, raised the status of A, and the opinion is given that he was thereafter entitled to three months' notice, expiring at any time. The suggestion in the question that he is engaged from year to year (as his yearly turnover can only be ascertained once a year) cannot be supported, nor is there any evidence of intention to pay commission after the termination of the engagement. See *Marshall* v. *Glanvill* [1917] 2 K.B., at p. 92, and *Levy* v. *Goldhill* [1917] 2 Ch. 297. It so happens that three months' notice from the 28th August will almost coincide with the end of his commission year, but the firm were entitled to terminate his engagement at the end of any period of three months and pay him commission *pro rata* based on the monthly average for the broken period of the year. Besides the two above cases, reference may be made to the county court decisions discussed in the Practice Note entitled "Commercial Traveller's Length of Notice" in our issue of the 1st February, 1930 (74 Sol. J. 72), and prior references there stated.

Liability of Lessee Holding Over.

Q. 2347. A lessee holds over for a week or ten days after the expiration of his term of years. There is no further payment of rent. Is the landlord entitled to a further full quarter's rent? There seems to have been some such rule in the past.

A. It is a question of fact in each case whether a tenant who holds over after the expiration of his lease, does so upon such of the terms of the lease as are applicable to an annual tenancy: see per Swinfen Eady, L.J., in *Wedd* v. *Porter* [1916] 2 K.B. at p. 98. Until there has been a further payment of rent, however, the ex-lessee is merely a tenant on sufferance. The question does not state whether the ex-lessee quitted the premises at the end of the ten days, but, if he did, he would only be liable for use and occupation during that period, and not for a further full quarter's rent.

Will—Trust for Sale and Division—One Share Settled—Appropriation or Partition.

Q. 2348. A testatrix by her will, made in 1928, appointed three executors to be her executors and trustees, and after certain legacies gave the residue of her estate unto her trustees upon trust for sale and to divide the proceeds as to two third parts thereof to each of two executors, and as to the remaining one-third, upon trust for the third executor for life, and after

his death as to the capital thereof unto and equally between the other two executors. The two executors and trustees are, therefore, absolutely entitled to one-third of the residue each, and the other executor and trustee is entitled to the income of the remaining one-third for his life. The estate comprises, as to the personal estate, certain shares, which will, of course, either be realised or taken over by the two executors beneficially and immediately entitled in satisfaction or part satisfaction of their absolute interest, and as to the realty, the same comprises between twenty and thirty houses of varying values. The two executors who take their one third shares absolutely are not in favour of an immediate sale of the realty in view of the prevailing conditions in the country, and in order to arrive at a settlement and division of the estate, have suggested that the realty be divided into three equal portions, and that they should take their respective one third shares of the realty by conveyance to themselves and that the remaining one third share of the realty should be sold and the proceeds invested, of which the third executor is to have the income for life. The third executor would, of course, also take the share of the proceeds of sale of the shares which would also be invested for his benefit, and of which he will have the income. Unfortunately the third executor does not favour this course, and we shall be obliged if you will kindly let us know whether the two executors who wish to divide the realty in the manner mentioned can maintain their attitude so as to avoid an application to the court, which would, we presume, have to be made if the third executor would not agree to a division on the lines mentioned. It seems fair to deal with the estate in this way, since the two executors mentioned prefer to keep the properties rather than sell them at this time, and we wondered whether in your opinion, if application was made to the court, the two executors who wish to retain their shares of the realty would have their attitude confirmed or otherwise. The trust for sale gives power to postpone the sale. The deceased died in January last, and except for this deadlock the estate can be wound up practically straight away.

A. The position is one of considerable doubt. The opinion is given that the executors as such, before assenting to the devise and bequest to themselves upon trust for sale could, under s. 41 of A. of E.A., 1925, after a proper valuation under sub-s. (3), appropriate to each of the two absolutely entitled one-third of the assets, leaving the remaining one-third for the settled share. The section says nothing about appropriation to themselves as beneficiaries, but it is generally considered that this is implied. As trustees for the sale they cannot partition under s. 28 of L.P.A., 1925, as one of the shares is settled (*Re Thomas: Thomas* v. *Thompson* [1930] 1 Ch. 194), but it seems clear it is a case in which the court would give leave under s. 57 of T.A., 1925. It is suggested an originating summons be issued, asking whether the executors before assenting to the disposition in favour of themselves can appropriate as suggested in the first part of this answer, and failing this, that the court should sanction the proposed division under s. 57.

Incomplete Deed of Separation.

Q. 2349. In August last unhappy differences having arisen between them, Mr. and Mrs. A agreed to enter into a deed of separation whereby the husband was to pay his wife a weekly allowance of 30s. Arrangements had previously been made for the parties to take a holiday together, but, in view of the changed circumstances, it was decided that the wife should not accompany her husband on holiday. The husband consulted his solicitors, who prepared and sent to the wife's father a draft of the deed, which provided for payment of the agreed weekly allowance. As the husband would be going on holiday before the deed could be completed, it was arranged between the parties that the wife should vacate the house in which the parties were living. When returning the draft deed the wife's father intimated that, "without prejudice to her present position Mrs. A is giving possession of . . . in order to suit your client's convenience." The husband made three or four payments at the rate of 30s. per week, but has now reduced the allowance to £1 per week. The deed has not been completed and our efforts to effect a settlement upon the terms originally agreed upon are of no avail.

(1) If the husband will not complete the deed providing for weekly payments of 30s. as arranged, are the circumstances peculiar to the case, and the fact that the wife left the husband without prejudice to her position and for his convenience, sufficient to support a summons against the husband for desertion and for maintenance?

(2) Alternatively, if the wife returns to the husband's abode and he refuses to maintain her or by his conduct causes her to leave him, will she have grounds to proceed against him before the justices for the separation order and maintenance, even though the parties do not cohabit?

(3) If on the before-stated facts your replies to queries (1) and (2) are against the wife, what do you suggest is her best remedy, regard being had to expense?

A. The evidence discloses a tacit agreement to separate, and the opinion is therefore given that—

(1) The facts will not support a summons against the husband for desertion, but there is evidence of wilful neglect to maintain.

(2) There is no need for the wife to adopt the idle form of returning to her husband's abode, in the expectation of being forced to leave again, as this would not justify an application for a separation order.

(3) The best remedy is to apply for a maintenance order on the ground of wilful neglect to maintain. See *Fletcher* v. *Fletcher* (1928), 92 J.P. 94.

Dissolution of Farmers' Association—Tax on Surplus.

Q. 2350. A local farmers' association, registered under the Industrial and Provident Societies Act, 1893, has recently voluntarily dissolved, the shareholders receiving their share of capital and interest plus a proportion of the surplus shown by the liquidator's account at £4 7s. 7d. per £1 (nominal) share. The liquidator is not, of course, responsible to the tax authorities for any tax, the association being registered under the Industrial and Provident Societies Act, nor is he in fact a liquidator so called, but merely an agent for distribution; but the question has been raised as to whether the shareholder is liable to tax on any of the surplus received by him. The liquidator states that a part of the surplus has arisen by the appreciation of shares in which the surplus profits have from time to time been invested, and a further part from accumulated dividends from such investments. It would appear, therefore, that there might be a question of tax due on whatever part of the surplus relates to such dividends, but the liquidator has not the information to enable him to say what part has arisen through accumulated dividends and what part through the appreciation of shares. Do you consider that any part of the payments now made on the voluntary dissolution of the association is liable to income tax?

A. As the conditions for exemption laid down by s. 39 (4) of the Income Tax Act, 1918, have presumably been complied with, it is doubtful whether the recipients of the surplus would be liable for tax, particularly as the dividends would have suffered tax before receipt. In any case, as the liquidator is unable to differentiate between capital and income, it would appear impracticable for the recipient to include any definite figure in his return.

At the annual meeting of the Enrolled Law Agents in the Stirling (or Western) District of Stirlingshire, the following were appointed poor's agents for the ensuing year, subject to the Sheriff's approval: Messrs. James Dobbie, James Learmonth, John B. Robb and W. A. Dick Smith.

Notes of Cases.

House of Lords.

Sparey (Pauper) *v.* Bath Rural District Council.

16th November.

WORKMEN'S COMPENSATION—COURSE OF EMPLOYMENT—ACCIDENT ARISING AFTER CONCLUSION OF WORK—WORKMEN'S COMPENSATION ACT, 1925, s. 1.

This was an appeal from the Court of Appeal affirming an award of the county court judge of Somerset.

The appellant was a workman who was engaged by the respondents on the work of road repairing near Bath. The work consisted in tarring a part of the road and sweeping another part beyond the tarred section. On 5th July, 1929, the work was over at 5 p.m., and the appellant proceeded to leave the work on his bicycle for home. Before he left the portion of the road which was swept he passed two horses which had been used in connexion with the tarring work and one of them kicked out as he passed and caused him the injuries for whic he now sought compensation, and the question arose whether or not the injury was caused in the course of his employment. The county court judge, who sat as arbitrator, decided that it was not. The Court of Appeal held that this was a decision on a question of fact, and accordingly dismissed the appeal from the award of the judge. The workman now appealed to the House.

Lord BUCKMASTER, in the course of his judgment, said he found it difficult on any known test to say that this accident arose in the course of the employment. That the employment did not necessarily cease with the conclusion of the day's work was certain. The course of employment continued while the workman was lawfully upon the employers' premises. Hazards which he then encountered would if they resulted in accident be risks which the workman ran in the course of his employment, but when once the premises were left and the workman was no longer under any contract and was in the same position as an ordinary member of the public the danger he there encountered was one which other members of the public equally shared. That appeared to be the true position in this case. Any other member of the public was entitled to use the highway under the same conditions as the workman and the fact that the horses happened to be on the swept portion did not change the situation that would have existed had they been on the highway a few yards farther up. He thought the award was right and that the appeal should be dismissed.

The other learned lords agreed in dismissing the appeal.

Lords WARRINGTON, RUSSELL and MACMILLAN were of opinion that the question was a question of law. Lord ATKIN thought it a question of fact.

COUNSEL: *Sir W. Greaves-Lord*, K.C., and *B. K. Featherstone; Edgar T. Dale* and *Montague Berryman*.

SOLICITORS: *Gustavus Thompson & Sons*, for *Hillier and Considine*, Bath; *Calder Woods & Sandiford*, for *F. E. Metcalfe*, Bristol.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Civilian War Claimants Association *v.* The King.

19th November.

PETITION OF RIGHT — TREATY — REPARATIONS — CLAIM TO COMPENSATION—CROWN NOT A TRUSTEE.

This was an appeal from the Court of Appeal, affirming a decision of Roche, J., who had given judgment for the Crown on demurrer.

The appellant company was formed for the purpose of obtaining compensation for civilian sufferers who had suffered loss by air raids during the war. It was alleged that the appellants were assignees of sums said to have been due from the Crown to certain subjects who had suffered loss owing to the aggression of Germany and that under the Treaty of Versailles the claimants had a preferential charge on the reparations received from Germany. It was contended on behalf of the appellants that the Victorian idea of the impossibility of maintaining an action against the Crown on the implication of a trust or agency had been greatly modified during the present century, and that it was possible to-day even in the case of money received by the Crown under a treaty that the Crown should be treated as the agent or trustee of such money for the subjects in respect of whose claims the payment was made. Counsel for the Crown were not called upon to argue.

Lord BUCKMASTER, in delivering judgment, said it was known that the claims submitted to the Reparation Commission included other kinds of damage besides damage to civilians, but all those items were lumped together in one group claim. To attempt to establish that anyone was a trustee for the claimants in this case was an impossible task. Then it was said that when the money was received from Germany the Government became trustee, but that would include the liability to submit to an account. He could find no precedent for such a claim against the Government, and that would seem to be invading an area which properly belonged to the House of Commons. If the Government were not trustees of the money neither were they agents. Nor could he see that the money was received for the use of the claimants. It was left to the Government and their advisers to determine the principle on which the money should be distributed. That was how the case appeared to him on general principles. But that view was strongly fortified by the case of *Rustomjee* v. *The Queen*, 2 Q.B.D. 69, which strongly resembled the present case in facts. In that case Lush, J., said: "No doubt a duty arose as soon as the money was received to distribute it among the persons towards whose losses it was paid . . . but then the distribution when made would be not the act of an agent accounting to a principal, but the act of the Sovereign in dispensing justice to her subjects. For any omission of that duty the Sovereign cannot be held responsible. The responsibility would rest with the advisers of the Crown and they are responsible to Parliament and to Parliament alone." That completely covered the present case. The appeal must be dismissed.

Lords WARRINGTON, ATKIN, TOMLIN and MACMILLAN concurred.

COUNSEL: *Serjeant Sullivan*, K.C., *Pritt*, K.C., and *Cyril Radcliffe; The Attorney-General* (Sir W. Jowitt, K.C.) and *Colin Pearson*.

SOLICITORS: *Russell & Arnholz; Treasury Solicitor*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Smith *v.* Metropolitan Properties Co. Ltd.

Talbot and Macnaghten, JJ. 26th October.

LANDLORD AND TENANT—ACTION FOR COMPENSATION FOR GOODWILL—NOT MAINTAINABLE BEFORE EXPIRATION OF TENANCY—LANDLORD AND TENANT ACT, 1927 (17 & 18 Geo. 5, c. 36), ss. 4, 5.

Defendants' appeal from a decision of Judge Turner, Westminster County Court.

The plaintiff, John Edward Smith, was the tenant of premises 79, Chancery-lane, and 13, Bishop's Court, Chancery-lane, two ground-floor shops, which he used for the business of a restaurant. A fourteen years' lease of the premises had been granted by the defendants, Metropolitan Properties Co. Ltd., as from the 25th March, 1919. On the 27th April, 1931, the plaintiff, who was still in possession of the premises as assignee under the lease, issued a summons in the county court, claiming £1,000 compensation for goodwill from the defendants.

On the trial of the matter as a preliminary point of law, the county court judge held that the action was not premature and was maintainable. The defendants now appealed.

TALBOT, J., said that the facts clearly raised the question whether an action to recover compensation under s. 4 of the Act of 1927 could be begun before the tenancy expired and before the tenant had quitted his holding. Section 4 must be read in conjunction with the County Court Rules, Order 50B, which indicated an intention that the action should be brought after the tenancy had expired. It was, moreover, quite clear that the right to be paid compensation did not arise until the end of the tenancy. The person against whom the action must be brought was the person liable to pay, and he must be the person who was landlord at the end of the term, and who obviously could not be ascertained until the tenancy expired. The point on which the respondent mainly relied arose from the wording of s. 5. The point made was that, in an application under s. 5, the court might in certain cases refuse to grant a new lease and grant compensation instead; it was said, therefore, that as the application for a new lease must necessarily be made before the expiration of the old one, the Act clearly contemplated the assessment of compensation before it was due. He did not think that that argument was sound, and he was of opinion that there was nothing in s. 5 which deprived s. 4 of the meaning which it apparently bore. The appeal would be allowed.

MACNAGHTEN, J., agreed.

COUNSEL: *Cecil Havers*, for the appellants; *T. J. Sophian*, for the respondent.

SOLICITORS: *Jennings & Chater; Charles Stevens & Drayton.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Millichamp *v.* Millichamp.

Lord Merrivale, P., and Langton, J. 13th October.

HUSBAND AND WIFE—SUMMONS FOR WILFUL NEGLECT TO MAINTAIN—ANTE-NUPTIAL AGREEMENT THAT HUSBAND'S MOTHER SHOULD SHARE MATRIMONIAL HOME—HOME LEFT BY WIFE OWING TO CONDUCT OF HUSBAND'S MOTHER—ORDER AGAINST HUSBAND—FIRST DUTY OF HUSBAND IS TO WIFE—AMOUNT OF ORDER REDUCED.

This was an unsuccessful appeal by a husband against an order of the Frodsham justices finding him guilty of wilful neglect to provide reasonable maintenance for his wife and directing him to pay to the wife 15s. per week for herself and 5s. per week for the child of the marriage. The facts appear sufficiently from the judgment.

LORD MERRIVALE, P., in giving judgment, said that the parties were married in June, 1930 after a long courtship in the expectation and under the promise that they would share their home with the husband's mother, who was sixty-eight years old. That they did. According to the wife the position became quite impossible owing to the behaviour of her mother-in-law. In response to a request by the wife that the husband should make a home apart from his mother, he relied on the old expectation. The wife then went to live with her mother and claimed maintenance from the husband. The husband's mother had a pension of £1 per week, and he had been earning about £2 6s. per week, which had fallen off recently owing to difficult times. The man felt his filial obligations, which was natural enough and creditable. It was also natural enough that the wife should say that she could not live under those conditions. The magistrates had had to deal with the matter according to law and to find whether or not the husband had, in breach of his duty, wilfully neglected to provide maintenance for his wife. They came to the conclusion that he had. The question was what was his first duty—to his wife or his mother? The magistrates came to the conclusion that by reason of the difficulty about his mother he had failed in his duty to his wife—and had failed because he put his mother first instead of his wife. With every sympathy for the parties he (his Lordship) thought that the magistrates' decision was right, but in view of the husband's means the wife's allowance would be reduced to 12s. per week.

LANGTON, J., agreed.

COUNSEL: *Marshall-Reynolds*, for the appellant husband. The respondent was not represented.

SOLICITORS: *Stowe, Preston & Lyttelton*, for *W. E. Hough*, Runcorn.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Fergusson *v.* Fergusson.

Langton, J. 10th November.

DIVORCE—APPLICATION FOR MAINTENANCE BY GUILTY WIFE—NO APPEARANCE BY WIFE AT THE HEARING OF PETITION FOR DISSOLUTION—SUBSEQUENT PROCEDURE TO BE FOLLOWED BY WIFE—LEAVE REQUIRED TO ENTER APPEARANCE AND FILE PETITION FOR MAINTENANCE—APPLICATIONS FOR COMPASSIONATE ALLOWANCES IN SUITS TRIED AT ASSIZES—JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 190.

This was a summons adjourned into court for a ruling as to the practice to be followed in such cases.

The husband obtained at Leicester Assizes a decree *nisi* of dissolution against the wife on the ground of her adultery. The wife had entered no appearance to the suit. Subsequently she filed a petition for maintenance. This was dismissed by the Registrar on the ground of want of jurisdiction, there having been no appearance. The wife appealed to the Judge in Chambers, and she was given leave to amend her appeal summons by asking for leave to appear and to file a petition for maintenance, and it was further ordered that she should have leave to appear. The matter was then adjourned into court for a ruling as to the practice.

LANGTON, J., said that after consultation with the President (Lord Merrivale) it had been decided to lay down a definite procedure to be followed in respect of applications by respondent wives in matrimonial suits for compassionate allowances. It was a rare class of case and none of the observations now to be made was to be taken to encourage that class of petition, which would receive the same treatment as in the past on the merits. There were three groups of cases: First, when an application was made at the hearing in London in a contested or uncontested case moving the court to compel the husband to make some form of compassionate allowance, the judge had an absolute discretion to deal with the application then, and was not fettered by any rule as to special circumstances; secondly, a respondent wife might make a similar application at the hearing on assize. On circuit a judge did not have the assistance of the officials of the Principal Registry, to whom he could refer such an application for report. In those circumstances the assize judge might see fit, instead of making an order for a compassionate allowance then and there, either to direct that the applicant be at liberty to file a petition in London for maintenance, or to direct that the applicant should herself apply in London for such leave. The discretion of the assize judge was quite unfettered; thirdly, where there had been no appearance by the respondent wife, she must first obtain leave to enter an appearance. This leave could be given by a Registrar. Having appeared the wife must apply by judge's summons for leave to present a petition for maintenance. As regarded the principles to be applied by the court on that summons, *Scott* v. *Scott* [1921] P. 107, was as strong an authority as ever. It was a matter of law and not of discretion whether or not such a petition had been presented within a reasonable time after the decree absolute having regard to all the circumstances of the case.

COUNSEL: *Clifford Mortimer*, for the petitioner; *T. Bucknill*, for the respondent.

SOLICITORS: *Bennett, Ferris & Bennett*, for *Bray & Bray*, Leicester; *Landons*, for *Loseby, Son & Hammond*, Leicester.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

Rex *v.* Kylsant.

Avory, Branson and Humphreys, JJ. 4th November.

CRIMINAL LAW — STATEMENT "FALSE IN A MATERIAL PARTICULAR"—FALSE BY SUPPRESSION OF FACTS—ERRONEOUS IMPLICATION—LARCENY ACT, 1861, 24 & 25 Vict., c. 96, s. 84.

This was the appeal against conviction and sentence of Owen Cosby Philipps, Baron Kylsant, who was convicted at the Central Criminal Court on the 30th July, 1931, of publishing or concurring in publishing a prospectus which he knew to be false in a material particular, inviting the public to subscribe to a debenture issue of the Royal Mail Steam Packet Company, with intent to induce persons to entrust or advance property to the company. The appellant, who at the material time was the chairman of the company, was sentenced to twelve months' imprisonment in the second division.

AVORY, J., in giving the judgment of the court, said that the grounds of the appeal were that there was no evidence that Lord Kylsant made or published, or concurred in making or publishing, a prospectus which was false in any material particular; that there was no evidence that he had made or published the prospectus knowing it to be false in any material particular; and that Wright, J. (who tried the case) misdirected the jury on various matters. Wright, J., directed the jury that the words in s. 84 of the Larceny Act, 1861, "a statement . . . false in any material particular" were not limited to a case where one could point to an account or statement and say "Here are certain figures, here are certain words which are false." That was unduly to narrow the words "in a material particular." The section covered the case of a written document which, as a whole, might be false, not because of what it stated, but because of what it did not state, and what it implied. He (Avory, J.) referred to passages by Lord Macnaghten in *Gluckstein* v. *Barnes* [1900] A.C. 240, at pp. 250 and 251; by Lord Chelmsford and Lord Cairns in *Peek* v. *Gurney*, 18 SOL. J. 467; L.R. 6 H.L. 377, at pp. 386 and 403; and by Lord Halsbury in *Aaron's Reefs Limited* v. *Twiss* [1896] A.C. 273, at pp. 281-284, and said that in the opinion of the court those authorities were sufficient to support the summing up of Wright, J. It was true that those were civil proceedings, but they did not think that the opinions expressed were none the less applicable in the present case. In the opinion of the court there was ample evidence on which the jury could come to the conclusion that the prospectus was false in a material particular in that it conveyed a false impression; there was also evidence on which the jury could properly find that Lord Kylsant knew that it was false. Also, in the summing up, regarded as a whole, there was no misdirection. Appeal dismissed, and the sentence not interfered with.

COUNSEL: *Sir John Simon*, K.C., *Singleton*, K.C., and *Wilfrid Lewis*, for the appellant; *The Attorney-General* (*Sir William Jowitt*, K.C.), *and Eustace Fulton*, for the Crown.

SOLICITORS: *Holmes, Son & Pott: Director of Public Prosecutions.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

SOLICITOR SHOT DEAD.

Mr. Richard Forster Yeo, a retired solicitor, of Hanover-square, London, was the victim of a gun tragedy at Maidenhead recently, while staying as a week-end guest with Mr. and Mrs. Ford, of Bray, Berks.

Mr. Yeo was searching for pheasants which he had shot previously, and it is thought that the double-barrelled gun he was carrying went off accidentally when he was climbing a wire fence at the edge of a wood.

A gamekeeper and a woodman who were assisting him heard the shot, and found him dead, with the gun lying at his side.

Societies.

Gray's Inn.

GRAND NIGHT OF MICHAELMAS TERM.

His Royal Highness The Duke of Gloucester, who is a bencher of Gray's Inn, dined with the treasurer (Sir Cecil Walsh, K.C.), and the benchers, in Hall on Thursday, the 19th November, the occasion being the Grand Night of Michalemas Term. The following guests were present:—

The Right Hon. Viscount Astor, The Right Hon. Lord Hugh Cecil, M.P., The Right Rev. The Lord Bishop of Gloucester, The Treasurer of the Hon. Society of the Inner Temple (The Right Hon. Sir John Simon, G.C.S.I., K.C.V.O., K.C., M.P.), The Right Hon. Lord Carson, The Master of the Rolls (The Right Hon. Lord Hanworth), The Right Hon. Lord Ebbisham, G.B.E., The Right Hon. Lord Salvesen, Sir Ernest Benn, Bart., C.B.E., Sir Philip Freeman, K.B.E., Sir Charles Neish, K.B.E., C.B., Captain Dudley North, C.S.I., C.M.G., C.V.O., R.N., Major Ronald Stanyforth, M.C., Captain Peter Macdonald, M.P.

The benchers present, in addition to His Royal Highness and the treasurer, were:—

The Right Hon. Sir Dunbar Plunket Barton, Bart., K.C., The Right Hon. Lord Merrivale, Mr. Edward Clayton, K.C., Mr. Arthur Gill, The Right Hon. Lord Atkin, Sir Montagu Sharpe, K.C., Sir Alexander Wood Renton, G.C.M.G., K.C., Mr. W. Clarke Hall, Mr. R. E. Dummett, The Right Hon. Lord Thankerton, The Right Hon. Lord Greenwood, K.C., The Hon. Vice-Chancellor Sir Courthope Wilson, K.C., Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. Frederick Hinde, Mr. R. Storry Deans, Mr. A. Andrewes Uthwatt, Mr. Malcolm Hilbery, K.C., Mr. Noel Middleton, Mr. N. L. C. Macaskie, K.C., Mr. W. Trevor Watson, K.C., Sir Albion Richardson, C.B.E., K.C., with the Preacher (The Rev. Canon W. R. Matthews, D.D.) and the Under-Treasurer (Mr. D. W. Douthwaite).

Huddersfield Incorporated Law Society.

The fiftieth Annual Meeting of the Society was held on the 11th inst., at Whiteley's Café, Huddersfield.

The following were present: The President (Mr. A. E. T. Hinchcliffe) in the chair; Messrs. H. C. Walker, J. F. Best, W. L. Wilmshurst, J. H. Fletcher, D. J. Bailey, J. J. Booth, J. H. Turner, D. J. Cartwright, E. E. Fieldhouse, G. E. Shaw, J. D. E. Smith, E. Sheard, E. L. Fisher, P. G. Norton, H. W. Jackson, J. D. Spencer, H. H. Ramsden, F. C. Watkinson, H. E. Walton, H. F. Longbottom, M. E. Sykes, S. Kaye, B. M. Schofield, T. E. Jackson and T. P. Downey, and a representative attendance from the Huddersfield Law Students' Society.

After the report of the Committee and the Treasurer's financial statement had been adopted the President delivered his annual address.

The following resolution was then passed: "That the best thanks of the Society be given to the President, Secretaries, Treasurer, Committee and Auditors for their services during the past year."

The following were elected to office for the ensuing year:—

President: Mr. J. J. Booth.

Vice-President: Mr. P. G. Norton.

Honorary Treasurer: Mr. G. E. Shaw.

Honorary Secretaries: Messrs. S. Hulme and E. Sheard.

Committee: Messrs. J. H. Fletcher, F. C. Watkinson, J. F. Best, T. E. Jackson, H. E. Walton, S. Kaye, H. C. Walker, H. H. Ramsden and D. J. Cartwright.

Auditors: Messrs. T. P. Downey and A. Mellor.

Mr. W. R. Briggs was elected an honorary member of the Society.

The Grotius Society.

The following meetings have been arranged, and in each case will commence at 4.30 p.m.:—

3rd December.—"The Economic Weapon as a means of Peaceful Pressure," by Sir Anton Bertram, formerly Chief Justice of Ceylon.

10th December.—"Diplomatic Claims on behalf of Companies operating abroad," by Mr. W. E. Beckett, Second Legal Adviser to the Foreign Office.

21st January, 1932.—"Nationality under the Peace and Minorities Treaties," by Sir Walter Napier, D.C.L.

4th February, 1932.—"The Administration of Occupied Territories"—a commentary on the Bellot Rules in the light of practical experience in Mesopotamia—by Lt.-Col. Sir Arnold Wilson, K.C.I.E.

The Auctioneers' and Estate Agents' Institute.

A sessional evening meeting of the members of the Institute will be held at 29 Lincoln's Inn Fields, W.C.2, on Thursday, 3rd December, 1931, at 8 p.m., when Mr. F. T. Hart (ex-chairman, South Middlesex Assessment Committee) will deliver a paper entitled "Present-day Rating and Valuation."

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, 60, Carey-street, on Tuesday, 24th November, 1931 (Chairman, Mr. A. L. Ungold-Thomas), the subject for debate was "That the case of *Charles Hunt Ltd.* v. *Palmer* [1931] 2 Ch. 287, was wrongly decided." Mr. I. T. Smith opened in the affirmative; Mr. W. M. Pleadwell opened in the negative. Mr. R. F. G. Swinson seconded in the affirmative; Mr. D. H. McMullen seconded in the negative. The following members also spoke: Messrs. E. F. Iwi, T. M. Jessup, J. M. Buckley, H. J. Baxter, J. C. Christian-Edwards, and Mr. Iliff (a visitor). The opener having replied, and the Chairman having summed up, the motion was lost by three votes. There were twenty-two members and six visitors present.

The meetings of the Society will in future be held in The Law Society's Court Room, at 60, Carey-street, W.C.

The Law Society.

INTERMEDIATE EXAMINATION.

The following Candidates (whose names are in alphabetical order) were successful at the Intermediate Examination held on the 4th and 5th November, 1931. A Candidate is not obliged to take both parts of the Examination at the same time.

FIRST CLASS.

Harold Benjamin, B.A. Oxon, Joseph Benjamin, Richard Bowyer, Lawrence John Frost, John Herman Godden, George Hibbert, Richard Hiles, Ernest Arthur Landau, Robert Francis Stokes, George Taylor, Francis Hugh Vowles, Richard Dallas Wood, Edward Leslie Wright.

PASSED.

John MacConnal Armstrong, Frank Barker, Edward Humphrey Bowen, Alan Bradley, Harold Button, Francis Edward Carpenter, Allen Chaffer, Milfred Estcourt Crosland, Arthur Charles Davis, Alexander Hugh Hamon Massy Dickie, B.A. Oxon, Kenneth Mallet Duggan, Frank Entwistle, Geoffrey Charles Forbes, Samuel Forshall, B.A. Cantab., Philip David Forsyth, B.A. Cantab., Charles Donald Garrett, William Ivor Gaunt, Herbert Dudley Grayson, Frank Hill, Herbert Russel Hinckley, Gerald Ashcroft Holford, Horace Holmes, Dennis Barton Ireland, Llewelyn John, Richard Herbert Ling, Henry Vincent Litchfield, Harry Longley, Howard William Lyne, B.A. Oxon, Albert Edward Martin, Ralph Middleton, B.A. Oxon, James Gabriel Mitchell, Cyril Howard Moseley, Davia Nelson, Charles Kenneth Ouin, John Harden Philcox, Francis Roy Phillips, Alexander Charles Roberts, Edward Shaw Russell, Joseph Sandiford, Harold Herbert Percy Schuster, Edgar Gartrell Kinsman Sherborne, Cecil Sheridan, John Edward Siddall, LL.B. Sheffield, John Gordon Smith, Norman Lewis Swain, Geoffrey Cook Taylor, William Hilton Waddington, John Walton, John Herbert Warren, Digby Milward Weightman, B.A. Oxon, Jerome Bernard Whelan, James Whiteside, Wilfred Thomson Whitlaw, Derek Paul Wilks, Robert Hugh Willatt, B.A. Oxon, Richard Eyton Williams, John Clermont Witt, B.A. Oxon, William Rhodes Wooldridge, Edward Roy Wright, William Ernest Young.

The following Candidates have passed the Legal Portion only:—

Richard Ainscough, B.A. Cantab., Paul Anthony Glynne Aldington, Robert Edward Allen, Christopher Lee Ashford, B.A. Cantab., Thomas Henry Attwater, Henry Willis Aubin, Alfred Lovell Berridge, Edward Austin Boothroyd, Richard Shakspeare Bramley, William Ridley Gow Brown, Arthur Carter, Gerald Frederick Chantler, John Cray Christie, Theobald Maurice Cohen, Maurice Fletcher Coop, B.A. Cantab., Leslie Herbert Coppard, David Stuart Lionel Courtenay-Dunn, Harold Charles Crowther, James Crowther, Howel Norman Davies, Owen Glyndwr Davies, John Arthur Davis, Sydney Herbert Daviss, Arthur Philip Drury, B.A. Oxon, Godfrey Curzon Fleetwood Duncan, Charles Harvey Elgood, Leonard Percy Thomas Ellis, Thomas Samuel Evans, William Pope Farnfield, B.A. Cantab., Raleigh Clerevaulx Fenwick, Boris Fishman, John Percival Bacon Forster, Charles Edward Fraser, Joel Fredman, Charles Maurice Wainewright Sandford Freeman, B.A. Oxon, James William Girling, Sydney William Glenister, Francis Henry Gerard Heron Goodhart, M.A. Oxon, Hartley Brisco Graham, John Stapleton Gwatkin, B.A. Oxon, Robert Wilton Gwyther, Walter Cameron Haden, B.A. Cantab., Stanley Vincent Hall, Ada Halstead, Michael Talbot Harraway, Cyril Charles Harrison, Edward Michael Harrison, B.A. Cantab., Eric Francis Hatch, Robert Francis Hills, Anthony James Hockley, Harry Ronald Jacobs, Arthur Reginald Jeans, Hopkin Alfred Llewellyn Jones, B.A. Cantab., Edward Henry Jordan, B.A. Oxon, Jessie Margaret Jordan, Robert Matthias Kenworthy, John Douglas Kerr, B.A. Cantab., John Henry Kidgell, Edward Ryley King, Edward Robert James Leggett, Leslie Sinclair Lewis, B.A. Cantab., Ian Maclean, B.A. Cantab., Cyril Weston Mainwaring, B.A. Cantab., Alan Mander, Henry George Martin, Anthony Adeane Martineau, B.A. Cantab., John William Mead, Maurice Mead, Jack Mee, John Guy Millar, Edward Dobson Moody, Reginald Currer Moorhouse, Alfred Denis Morris, Charles Elvin Goodman Mumby, B.A. Cantab., William Hugh Christopher Page, Michael Bennett Pascoe, George Edward Payne, Christopher George Henry Perks, John Spencer Protheroe, William Rawcliffe, Oliver Charles Richards, Ronald Hugo Richardson, William Owen Robyns, Harold Hector Russell, Gerald Samuels, Conrad Melhuish William Robert Seward, William Francis Leonard Skinner, Walter Mervyn Wadham Smith, William Stanley Smith, Mervyn Hardinge Douglas Snape, Kenneth Floyd Speakman, Patrick John Holwell Stanley, Reginald Walter George Fitzgerald Stannus, B.A. Cantab., Albert Edward Frank Steel, Iswald Stein, James Sutcliffe, Emyr Prichard Thomas, Horace Edward Unicume, Walter Henry Walker, Bernard William Wallace, Bryan Marfrey Walter, Francis Arthur John Webb-Jones, Leslie Hyam Weinberg, Charles Alfred White, Hugh Whitefield, Cyril Herbert Wild, George Stephen Wilkinson, Edward John Winterbottom, Philip Adolphus Featherstone Witty, Adolph Abraham Wolff, Geoffrey Beardall Wood.

No. of Candidates, 291. Passed, 184.

The following Candidates have passed the Trust Accounts and Book-keeping portion only:—

James Walter Akeroyd, LL.B. Leeds, John Brian Allinson, Henry Yarborough Anderson, Walter Charles Anderson, LL.B. Liverpool, Maurice Francis Armstrong, B.A. Cantab., John Holroyd Bairstow, B.A., LL.B. Cantab., Harry Baldwin, Thomas Frederick Barton, B.A. Cantab., David Joy Beattie, LL.B. Manchester, Thomas William Bigge, B.A. Cantab., Stewart Paynter Boase, B.A. Cantab., Ronald Scott Lawrance Bowker, B.A. Oxon, Eric George Broad, Sidney Leonard Brunt, Guy William Walker Bunting, B.A., LL.B. Cantab., Gerald Gale Burkitt, LL.B. Birmingham, Patrick Maynard Warren Butler, B.A. Oxon, John Frederick Slade Carpenter, B.A. Oxon, Philip Roland Cash, James Noel Childs, Henry Angus Clidero, Herbert Richard Sutton Clifford, Derek Frank Sherwell Clogg, B.A., LL.B. Cantab., Arthur Patrick Cocks, Derek Cragg-Hamilton, William Henry David Crawford, Charles Clayton Croggon, B.A. Cantab, John Clemens Crothers, B.A. Cantab., William Norman Curtis, Edward Dean, LL.B. Leeds, John Law Denison, Ernest Reginald Dennis, James Louis Christian Dilcock, LL.B. Liverpool, Frank Hamer Duncan, LL.B. Liverpool, Henry Adrian Greenhill Durbridge, B.A. Oxon, James Rufus Dyer, John Basil Edwards, B.A. Oxon, Peter Adie Evans, B.A., LL.B. Cantab., Kenneth Desmond Findeisen, B.A. Oxon, Ernest Marshall Foster, B.A. Oxon, Maurice Richmond Fox, James William Francis, John Higham Franks, Henry Arthur Fry, Roy Broadbent Fuller, Gilbert Henry Furner, Enid Garratt, LL.B. Manchester, Edward Martin Gaunt, LL.B. Manchester, Reginald Thomas Gilchrist, B.A. Cantab., Gaston Denis Gilmore, Felix Beresford Goodman, Norman Cyril Goodridge, Edward David Gosschalk, Ronald Harry Graveson, Denis Robertson Green, B.A., LL.B. Cantab., Charles Henry Richards Grimes, B.A. Cantab., Charles Aneurin Haig, LL.B. Liverpool, Richard de Zouche Hall, B.A. Cantab., William Leslie Hall, Edward Harper, Beverley Thelwall Harrison, B.A. Cantab., William Ernest Hebden, Philip Gerard Herrin, Robert Peverell Hichens, B.A. Oxon, Gerald Wilson Hill, B.A. Oxon, Derek Percy Hilton, B.A. Cantab., Gerald Baxter Ness Hoare, B.A. Cantab., Harold Robinson Hodgson, LL.B. Manchester, William Frank Hollands, John Thorneloe Horniblow, David Gwynydd Howell, B.A. Oxon, Charles William Hunt, Harry Hurwitz, LL.B. Leeds, Denis Charles Hutchison, B.A. Cantab., Henry William Walter Huxham, LL.B. London, Richard Hoyle Jackson, B.A., LL.B. Cantab., William Thomas Jackson, Edmund Trevor Merton Jones, B.A. Cantab., Margaret Jones-Bateman, B.C.L. Oxon, Joan Meredyth Chichele Jullien, Richard Henry Kennedy, Edgar Maurice Kingston, Edward Knowles, Gerard Vincent Lake, Leslie Gabriel Landau, B.A. Oxon, Ronald Hennah Langham, B.A. Cantab., William

Lansdale, Robert Kenneth Law, B.A., LL.B. Dublin, Nathaniel William Lawrence, B.A. Oxon, George James Lay, Philip Henry North Lewis, Alec Lifton, George Ernest Malley, LL.B. Liverpool, Wilfred Lucking Malley, Robert Henry Waterland Mander, John Marsh, B.A. Cantab., Robin Marie Marcus Mere, B.A. Oxon, John Edward Rooke Millard, LL.B. Liverpool, Edwin Ronald Mitchell, Philip James Monkman, Brian Lee Moore, Richard Hugh Morgan, Maxen Owen Morris, LL.B. Liverpool, William Ritson Morry, Wilfred Rutley Mowll, Joseph Rowntree Naish, Ralph Neild, B.A. Oxon, Kenneth Ronald Fielding Newton, Roydon Joseph Nicholson, B.A. Cantab., George Dyer Nott, Alastair Rose Paterson, B.A. Cantab., John Diddulph Pinchard, B.A. Oxon, Ben Pomerance, Caroline Winifred Prellé, LL.B. Liverpool, Gwilym Rosier Prys, Ernest Marquiss Pullen, B.A. Oxon, John William Pumfrey, Montague Rakusen, LL.B. Leeds, Idris Roberts (of Manchester), Thomas Blackburn Roberts, John Walker Sykes Robertshaw, Lawrence Patrick Redmond Roche, B.A. Oxon, Isaac Rosenbaum, LL.B. London, Leonard Sainer, LL.B. London, John Algernon Waring Sainsbury, B.A., LL.B. Cantab., Edgar Martyn Sanders, B.A. Cantab., William Scrivens, LL.B. Liverpool, Bernard Sharp, B.A. Oxon, LL.B. Sheffield, Donald Harrop Shuttleworth, George Francis Simmonds, B.A. Cantab., Francis George Hazell Smith, John Smyth, B.A. Cantab., Leonard Wellby Snow, B.A. Oxon, Robert Salusbury Dacre Spitta, B.A. Cantab., John Meaburn Staniland, LL.B. Sheffield, Alfred Peter Steele-Perkins, B.A., LL.B. Cantab., Roger Edward Stenning, B.A. Cantab., John Dinsdale Stokeld, Robert Bernard Strangeways, B.A. Cantab., William Tarlo, Aldersey Maynard Taylor, Arnold Blake Thomas, John Frederick Thompson, B.A. Oxon, Edward Mallinson Tregoning, B.A., LL.B. Cantab., Brian Morley Crosbie Trench, B.A. Oxon, James Henry Shepherd Turner, LL.B. Sheffield, Seymour Tylke, Ernest Robson Underwood, David Ison Wade, Geoffrey Howard Walker, B.A. LL.B Cantab., David Walters, Henry Herbert Walton, John Lawson Ward, B.A. London, David Louden Watts, James Kenneth Lukyn Watts, Alan Chester Watts-Jones, William Edmund Self Weeks, B.A. Cantab., Nicholas Welch, B.A., LL.B. Cantab., John Hartley Weston, Mary Ashwin White, LL.M. Sheffield, William Jolliffe Whitewood, Geoffrey Herbert Whittington, James Taylor Wilkinson, Francis John Williams, Vivian Whistance Williams, Wilfrid Francis Williamson, Francis Eden Wilson, B.A. Oxon, James Frederick Wiltshire, Eric Wolfe, LL.B. Leeds, Sidney John Wood, John Fraser Workman, B.A. Cantab., Davies Worth, Philip Richard Thomas Wright.

No. of Candidates, 377. Passed, 246.

Parliamentary News.

Progress of Bills.

House of Lords.

Abnormal Importations (Customs Duties).
Royal Assent. [20th November.
Expiring Laws.
Read Third Time. [26th November.
Merchant Shipping (Safety and Load Line Conventions).
Read Third Time. [26th November.
Statute of Westminster.
Read Second Time. [26th November.

House of Commons.

Educational Endowments (Scotland).
Read Third Time. [25th November.
Indian Pay (Temporary Abatements).
Read Third Time. [26th November.
National Health Insurance (Prolongation of Insurance).
Read Second Time. [25th November.

The Board of Trade have decided with the concurrence of His Majesty's Treasury, and in the interests of economy, to abolish at the end of this year the post of free-paid Official Receiver for the Isle of Wight Bankruptcy District, which is now held by Mr. A. J. S. Jerome, of Newport, Isle of Wight. From the 1st January, 1932, this district will be added to the district of the Official Receiver at Southampton (Midland Bank Chambers, High-street, Southampton), who will administer it from his sub-office at 87, High-street, Portsmouth. The merger will not affect the bankruptcy jurisdiction of the County Court of Newport and Ryde, Isle of Wight, in which petitions will continue to be heard and subsequent proceedings there will be dealt with as hitherto.

Legal Notes and News.

Honours and Appointments.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to approve the appointment of Mr. DAVID ALEXANDER DUNCAN, Assistant Clerk of the Bills and Sequestrations in the Court of Session, to be Clerk of the Bills and Sequestrations in the Court of Session, in place of Mr. Thomas Swinton Paterson resigned. Mr. Duncan, who was trained in the offices of Messrs. Simpson & Marwick, W.S., Edinburgh, has been depute clerk of Bills for many years.

LESLIE DE GRUYTHER, Esq., K.C., has been elected Treasurer of the Middle Temple for the ensuing year.

Mr. JOHN A. ARMSTRONG, solicitor, has been appointed Town Clerk of Eye (Suffolk).

Mr. RAMSEY GELLING JOHNSON, of the firm of Gelling, Johnson & Co., advocates, Douglas, has been appointed Vicar-General and Chancellor of the Diocese of Sodor and Man in succession to Mr. C. T. W. Hughes-Games, resigned. Mr. Johnson was admitted to the Manx Bar in 1912, and was appointed Clerk of Tynwald and Secretary of the House of Keys in 1929. He has been a member of the Douglas Town Council since 1921, and was Deputy Mayor in 1927.

Mr. GEORGE RODHOUSE REID, L.B., J.P., of the firm of Cameron & Shepherd, solicitors, Georgetown, Demerara, British Guiana, has obtained a Faculty to practise as a General Notary Public for the Colony of British Guiana. This appointment is interesting as being the first occasion on which a private resident has been appointed a notary public for British Guiana since the British occupation in 1803, the appointment having previously been restricted to Government officials connected with the Deeds Registry. Mr. Reid was admitted in 1898.

Councillor WALTER PIERCE DAVIES, J.P., solicitor, Shepherd's Bush, has been elected Mayor of Hammersmith for the ensuing year.

Mr. E. R. DAVIES, solicitor, Pwllheli (a member of the firm of Evan R. Davies & Davies), has been elected Mayor of Pwllheli for the ensuing year.

Councillor W. H. BELLIS, LL.B., solicitor, Southport (a member of the firm of R. Bellis & Son), has been elected Mayor of that county borough for the ensuing year.

Mr. JOHN L. CALDERWOOD, B.A., LL.B.(Cantab.), solicitor, Swindon (a member of the firm of Townsend, Wood and Calderwood), has been elected Mayor of that borough for the ensuing year.

Councillor J. G. KELLOCK, B.A., LL.B. (Cantab.), solicitor, Totnes and Newton Abbot (a member of the firm of Kellock and Cornish-Bowden), has been elected Mayor of Totnes for the ensuing year.

Councillor J. H. INSKIP, B.A., solicitor, Bristol (a member of the firm of James Inskip & Son), has been elected Mayor of that city for the ensuing year.

Alderman WILLIAM LUARD RAYNES, M.A., solicitor, Cambridge (a member of the firm of Eaden, Spearing and Raynes), has been elected Mayor of Cambridge for the ensuing year.

Mr. T. B. SIMPSON, advocate, has been appointed Standing Junior Counsel to the Board of Inland Revenue in Scotland.

Professional Announcements.

(2s. per line.)

Dr. THEODOR LERS, German Advocate, who has been practising in London for upwards of 30 years, has resumed his practice as an expert on German Law and translator to the legal profession, at 45, Great Marlborough-street, W.1. Telephone: Gerrard 1664.

Mr. F. H. RAMSDEN, practising as Ramsden & Co., at 85, Gracechurch-street, London, E.C.3, has admitted into partnership his daughter, Mrs. MARGARET SATCHELL. The name of the firm will remain unchanged.

Professional Partnerships Dissolved.

The partnership hitherto subsisting between Mr. F. J. BRUNSKILL and Mr. C. H. N. ADAMS and carried on at Crowborough, Lewes, and 41, Bedford-row, London, under the name of Hunt, Nicholson, Adams & Co., has been dissolved. The practice at Crowborough (which incorporates that of the late Mr. Frank Humphry) will be continued by Mr. F. J. Brunskill at the same address as heretofore, but under his own name and on his own account.

Professional Partnerships Dissolved.

JOHN JOSHUA HANDS and STANLEY CLIFFORD BARON, solicitors, 2, Coleman-street, London, E.C.2 (John J. Hands and Baron), dissolved as from 7th October, 1931.

Wills and Bequests.

Mr. Herbert Baddeley (59), of Dinard, retired solicitor, left personal estate of the gross value of £7,896, with net personalty £4,661.

Ernest Baggallay, barrister-at-law, of Egerton-gardens, S.W., formerly a Metropolitan Police magistrate, and M.P. for Brixton (unsettled property in his own disposition), left personal estate of the gross value of £15,712, with net personalty £12,382

ALLEGED FRAUDS BY SOLICITOR.

Thomas Herbert Moore, a solicitor, of Coalville (Leicestershire), was committed for trial by the Coalville magistrates recently on charges alleging fraudulent conversion of various sums totalling £468.

Mr. B. G. Saywell (for the Director of Public Prosecutions) said that Moore succeeded to the old-established practice of J. J. Sharp and Son in 1923, when the name of the firm was changed to Sharp and Moore. It was a conveyancing practice, and complaints were received as to the handling of money.

The charges were a selection from the number of complaints that had been investigated, he said. When the summonses were read to Moore, he said, "There is not a word of truth in it. These people forget what they owe me."

If it was going to be seriously urged, he added, that Moore was entitled to behave as he had done, because he alleged that people owed him money, it was a matter that would have to be gone into.

Moore reserved his defence, and pleaded not guilty.

The Bench obtained an assurance from Moore that he had no passport before allowing bail.

GENERAL COUNCIL OF THE BAR.

Sir HERBERT CUNLIFFE, K.C., has been appointed Vice-Chairman of the Bar Council in the place of Mr. E. A. Mitchell-Innes, C.B.E., K.C., recently appointed Chairman.

Sir Herbert was called to the Bar in 1896, took silk in 1912, and is a Bencher of Lincoln's Inn, and Attorney-General of the Duchy of Lancaster. He was Member of Parliament for Bolton 1923-1929.

Mr. A. F. TOPHAM, K.C., has been appointed a Member of the Council in the place of Sir Thomas Hughes, K.C., retired.

"LONG SERVICE."

Mr. John Brown (seventy-nine), of Selborne-road, Palmers Green, has been sixty-six years with one firm of solicitors in the City.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE.	MR. JUSTICE MAUGHAM.
			Witness. Part I.	Non-Witness.
M'nd'y Nov. 30	Mr. Jones	Mr. More	*Jones	Mr. Blaker
Tuesday Dec. 1	Ritchie	Hicks Beach	Hicks Beach	Jones
Wednesday 2	Blaker	Andrews	*Blaker	Hicks Beach
Thursday... 3	More	Jones	Jones	Blaker
Friday 4	Hicks Beach	Ritchie	*Hicks Beach	Jones
Saturday .. 5	Andrews	Blaker	Blaker	Hicks Beach

DATE	GROUP I. MR. JUSTICE BENNETT.	MR. JUSTICE CLAUSON.	GROUP II MR. JUSTICE LUXMOORE.	MR. JUSTICE FARWELL.
M'nd'y Nov. 30	Mr. *Hicks Beach	Mr. Andrews	Mr. *Ritchie	Mr. More
Tuesday Dec. 1	*Blaker	More	*Andrews	*Ritchie
Wednesday 2	*Jones	Ritchie	*More	Andrews
Thursday .. 3	Hicks Beach	Andrews	Ritchie	*More
Friday 4	Blaker	More	*Andrews	Ritchie
Saturday .. 5	Jones	Ritchie	More	Andrews

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. Next London Stock Exchange Settlement Thursday, 3rd December, 1931.

	Middle Price 25 Nov. 1931.	Flat Interest Yield.	Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	82	4 17 7	—
Consols 2½%	53	4 14 4	—
War Loan 5% 1929-47	96½	5 3 8	—
War Loan 4½% 1925-45	94½	4 15 3	5 1 0
Funding 4% Loan 1960-90	83	4 16 5	4 17 6
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	90	4 8 11	4 11 9
Conversion 5% Loan 1944-64	100	5 0 0	5 0 0
Conversion 4½% Loan 1940-44	95	4 14 9	5 0 6
Conversion 3½% Loan 1961	72	4 17 3	—
Local Loans 3% Stock 1912 or after	61	4 18 4	—
Bank Stock	249	4 16 5	—
India 4½% 1950-55	73	6 3 3	—
India 3½%	51	6 17 3	—
India 3%	43	6 19 6	—
Sudan 4½% 1939-73	94½	4 15 3	4 16 0
Sudan 4% 1974	84½	4 14 8	4 17 6
Transvaal Government 3% 1923-53 (Guaranteed by Brit Govt Estimated life 15 yrs.)	83½	3 11 10	4 3 6
Colonial Securities.			
Canada 3% 1938	88½	3 7 10	4 19 9
Cape of Good Hope 4% 1916-36	92½	4 6 6	5 15 0
Cape of Good Hope 3½% 1929-49	79½	4 8 1	5 5 6
Ceylon 5% 1960-70	98½	5 1 6	5 1 6
Commonwealth of Australia 5% 1945-75	81½	6 2 8	6 5 3
Gold Coast 4½% 1956	91½	4 18 4	5 2 6
Jamaica 4½% 1941-71	91½	4 18 4	5 0 0
Natal 4% 1937	92½	4 18 4	5 0 0
New South Wales 4½% 1935-45	71½	6 5 10	7 3 9
New South Wales 5% 1945-65	72½	6 17 11	7 3 6
New Zealand 4½% 1945	88½	5 1 8	5 14 9
New Zealand 5% 1946	94½	5 5 10	5 11 3
Nigeria 5% 1950-60	98½	5 1 6	5 2 0
Queensland 5% 1940-60	75½	6 12 5	6 19 9
South Africa 5% 1945-75	97½	6 12 5	6 19 9
South Australia 5% 1945-75	77½	6 9 0	6 12 9
Tasmania 5% 1945-75	79½	6 5 9	6 13 3
Victoria 5% 1945-75	77½	6 9 0	6 12 6
West Australia 5% 1945-75	80½	6 4 3	6 7 9
The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.			
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	61½	4 17 7	—
Birmingham 5% 1946-56	100½	4 19 6	4 19 6
Cardiff 5% 1945-65	100	5 0 0	5 0 0
Croydon 3% 1940-60	68½	4 7 7	5 2 6
Hastings 5% 1947-67	100½	4 19 6	4 19 6
Hull 3½% 1925-55	82½	4 4 10	4 14 6
Liverpool 3½% Redeemable by agreement with holders or by purchase	72½	4 16 7	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	52	4 16 2	—
London City 3% Consolidated Stock after 1920 at option of Corporation	61	4 18 4	—
Metropolitan Water Board 3% "A" 1963-2003	61½	4 17 7	—
Do. do. 3% "B" 1934-2003	62½	4 16 0	—
Middlesex C.C. 3½% 1927-47	85½	4 1 10	4 16 0
Newcastle 3½% Irredeemable	72	4 17 3	—
Nottingham 3% Irredeemable	60½	4 19 2	—
Stockton 5% 1946-66	100	5 0 0	5 0 0
Wolverhampton 5% 1946-56	100½	4 19 6	4 19 6
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	78½	5 1 11	—
Gt. Western Railway 5% Rent Charge	94	5 6 5	—
Gt. Western Rly. 5% Preference	77½	6 9 0	—
L. & N.E. Rly. 4% Debenture	69½	5 15 2	—
L. & N.E. Rly. 4% 1st Guaranteed	64	6 5 0	
L. & N.E. Rly. 4% 1st Preference	47½	8 8 5	—
L. Mid. & Scot. Rly. 4% Debenture	71½	5 11 11	—
L. Mid. & Scot. Rly. 4% Guaranteed	65	6 3 1	—
L. Mid. & Scot. Rly. 4% Preference	47½	8 8 5	—
Southern Railway 4% Debenture	73½	5 8 10	—
Southern Railway 5% Guaranteed	90½	5 10 6	—
Southern Railway 5% Preference	69½	7 3 11	—